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ABSTRACT

Volume I of a five-volume study of the trends in segregation of Hispanic students in public schools contains a review of relevant litigation and legislation dating from the 1850's and notes the almost negligible effect on Hispanic desegregation of such landmark events as the 1954 "Brown" decision and the 1964 Civil Rights Act. The effects of desegregation on Hispanics in the areas of achievement, ability grouping, dropouts and suspensions, quality of education, curriculum, staff allocations, and bilingual services are described, as are community response to desegregation, the so-called "white flight", and busing. School desegregation remedies are examined, with emphasis given to community involvement and mandatory plans (which appear to be more successful than voluntary plans) and including a discussion of the role of bilingual education in desegregation. Finally, a theoretical framework for the research findings of the study as a whole is presented. (SB)

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VOLUME 1

DESEGREGATION AND THE HISPANO IN AMERICA: AN OVERVIEW

TRENDS IN SEGREGATION OF HISPANIC STUDENTS IN MAJOR SCHOOL DISTRICTS HAVING LARGE HISPANIC ENROLLMENT

FINAL REPORT

JANUARY 9, 1980

Aspira of America, Inc.

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FOREWORD

Although most people espouse egalitarian, democratic views and favor unitary schools,* they often disagree about the means by which these should be achieved. Dissonance between the attitudes and behavior of the general public with respect to school desegregation requires a reexamination of the basic premises underlying the constitutional right to equal educational opportunity. Despite a constitutional mandate and court rulings, school desegregation progress over the last decade has been slow.

In fact, a 1977 report produced by Aspira of America, Inc.,** indicated that desegregation had proceeded slowly for black Americans and even more slowly for Hispanic Americans. According to that study, during the period studied (1970-74), Hispanos became more segregated.

In the fall of 1978, Aspira set out to examine this phenomenon more extensively through a Federal grant from the National Institute of Education: "Trends in Segregation of Hispanic students in Major School Districts Having Large Hispanic Enrollment." The results of that effort are contained in these five volumes: Desegregation and the Hispano in America:

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* Opinion polls continue to bear this out. See, for instance, National Opinion Research Center (NORC), 1970; Gallup Opinion Index, 1978; and D. Garth Taylor, et al., in Scientific American, 1978. Reports on racial attitudes indicate that U.S. whites have increased their support for desegregation at a steady pace since the 1960s.

** National, Regional, and District Population and Segregation Trends Among Hispanic Students 1970-1974, 1977.

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ABSTRACT

School desegregation is a process which affects virtually every family in this country. Unitary public schools are made possible by the fourteenth Amendment of the U.S. Constitution which guarantees equal protection under the law for all citizens, and Title VI of the Civil Rights Act of 1964, which guarantees equal educational opportunities.

School desegregation was once commonly perceived as an exclusively "Southern" problem. The general public viewed discriminatory segregation in public schools as being confined to the South, and blacks as the sole targets of this practice. However, Asians, Hispanos, Native Americans, and other racial and national origin public school students have been victims of discrimination and segregation in all areas of the country. Each of these groups are, to varying degrees, involved in the school desegregation movement. This study focuses on only one of those groups—the Hispanos—examining the history of their segregation, the public school discrimination practiced against them, and the effect of desegregation upon them.

In this volume a review of Hispanic school desegregation literature and litigation are examined, and the theoretical framework for our research findings is presented.

An Overview (Vol. I); Ethnographic Studies (Vol. II); An Analytic Study (Vol. IIIA and IIIB); Sample III (Vol. IV); and Bibliography: General and Legal (Vol. V). The first volume describes the effects of desegregation on Hispanos, outlines the context under which desegregation takes place, and the theoretical framework used in subsequent analyses. Volume II is a report of two ethnographic field studies of tri-ethnic communities undergoing court-ordered desegregation. Volume III describes Hispanic segregation trends through analyses of the Office for Civil Rights (OCR) biennal surveys (1968-76). Volume four is a special analysis of a purposive sample of 20 school districts, and Volume five contains the bibliographic material used throughout the reports.

The United States has fallen short in providing equal educational opportunity for minority public school students. In the following series of reports, we indicate the discrepancies between pronouncements and practical results, especially as these discrepancies affect Hispanic populations.

PART I: THE ISSUES

CHAPTER 1

INTRODUCTION

"Hispanic" (or "Hispano") is a term derived from the name of the Iberian peninsula, Hispania. The term is often used to describe the peoples of Spain, Portugal, and Latin America. In this report the terms "Hispanic" and "Hispano" refer to persons with an ancestry whose origins are in a country where Spanish is the dominant language. The term "Hispano" includes Mexican Americans (Chicanos), Puerto Ricans, Cubans, and Central and South Americans.* In the United States, such persons are also labeled "Latinos," "Spanish Americans," "Spanish-surnamed," or "Spanish-speaking." While much of our discussion pertains to this group as a whole, our data were derived primarily from Mexican Americans and Puerto Ricans and our analyses focus principally on them. These two groups comprise over 80% of all Hispanos in the United States.**

Segregation of and discrimination against Hispanos in the United States is an often neglected issue. These practices have not been considered as pervasive or significant as discrimination against blacks.***

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* The Portuguese are not included in this definition, but Spaniards are included.

** This figure does not include over 3 million "Puertorriquenos" on the island of Puerto Rico who are U.S. citizens.

*** Robert Crain, Gary Orfield, and others have suggested that Hispanos have not suffered to the same extent as blacks from vigorous assaults on their civil rights.

Although perhaps less ostentatious than black Americans in their complaints of discrimination on the basis of race and national origin, Hispanos are no less worthy of attention.

The Hispano has been relatively ignored in school desegregation scholarship and public policy. It is argued that because blacks were subjected to involuntary servitude their civil rights have been more seriously violated than those of other minority groups. This argument is simply not true. The constitutional rights of Hispanos have been denied just as systematically. A myriad of laws and policies were enacted which effectively disenfranchised Hispanos, denied them an education, and in some States prohibited them from jury duty until fairly recently. There have been systematic attempts to undermine the rights of the Hispano, for which considerable evidence will be presented in the following chapters. As the 13th Amendment, enacted after the Civil War, makes clear, their lot, in some cases, was one of actual slavery.*

Despite similarities in their historical and continuing treatment, Hispanos have had to fight, at times separately, to win the same rights blacks have won.

The public acts of discrimination and segregation Hispanos have endured have, in some cases, been as cruel and debasing as that suffered by blacks and other minority groups. In the late 1800s and early 1900s, in many parts of the Southwest, the life of a Mexican was deemed worthless, regardless of citizenship. The prevalent attitude of law enforcement was that, "There

* The Amendment "abolished slavery and involuntary servitude Including Mexican peonage and Chinese coolie trade" in The Black Law Journal, Margaret B. Wilson and Diane Ridley, 1976, p. 75. (emphasis added)

[was] . . . no penalty for killing (Mexicans), for no jury along the border would ever convict a white man for shooting a Mexican."* Even today officials still consider the life of Mexicans, regardless of citizenship, worthless.**

Most Hispanos in Texas, Arizona, New Mexico, California, and parts of Colorado and Utah became U.S. citizens as a conquered people, when Mexico, having just gained independence from Spain in 1821, lost the Mexican American War in 1848. Through the Treaty of Guadalupe-Hidalgo, signed February 2, 1948, Mexican residents of territories ceded to the United States became foreigners in their own homeland. The Treaty specified that:

> Mexicans now established in territories previously belonging to Mexico, and which remain for the future within the limits of the United States, as defined by the present Treaty, shall be free to continue where they now reside, or to remove at any time to the Mexican Republic, retaining the property which they possess in the said territories, or disposing thereof and removing the proceeds wherever they please (Article VIII).

In staying, Mexicans automatically became U.S. citizens within one year, but were entitled to specific rights and freedoms under the terms of the Treaty. They were to be:

> incorporated into the Union of the United States, and admitted as soon as possible, according to the principles of the Federal Constitution, to the enjoyment of all the rights of citizens of the United States. . . . With respect to political rights, their condition shall be on an equality with that of the inhabitants of the other territories of the United States . . . (Article IX).

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* George Marvin in Carey McWilliams, North From Mexico, 1968, p. 112.

** See, for example, Judge J. Skelly Wright in William Hazard, Education and the Law, 1971, p. 133.

Those rights proved shortlived for many new citizens. In 1856, only eight years after the Treaty of Guadalupe-Hidalgo, the U.S. Supreme Court ruled that Articles 8 and 9 did not apply to Mexicans who resided in Texas, since Texas had become independent before the Mexican-American War.*

The plight of the Puerto Ricans has similar parallels. Although they were not conquered in battle, the Spanish government ceded Puerto Rico to the United States when Spain lost the Spanish-American War in 1898; thus the people of the small Caribbean island became the subject-wards of the U.S. Government without any direct involvement in the war. While Mexican Americans were theoretically guaranteed citizenship and concomitant protection of property and civil rights in the Treaty of Guadalupe-Hidalgo, no such guarantees were written into the Treaty of Paris in which Spain ceded her colony. It was not until 1917 that the rights of U.S. citizenship were accorded the Puerto Rican people. For eighteen years, they were citizens of no country. Notwithstanding, it is interesting to note that even today Puerto Ricans are typically viewed as "foreign" although they do not come from a foreign country.

The defeat of the Mexicans in war, as well as the ceding of Puerto Rico a half century later, convinced many white U.S. citizens of the inferiority of Hispanos. Many of them believed they had the right to exploit and subjugate the conquered Hispanic population. Gary Orfield reports that:

> The early segregation of Mexican Americans was rigid and thorough in many parts of the Southwest. Ignorant of the United States legal system and commonly accepted political practices, they were easily stripped of land and power. In 1870, El Paso, Texas, had 12,000 inhabitants. Only 80 of these were Anglos, yet most of the elected offices and the county's wealth were controlled by Anglo-Americans.**

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* McKinney v. Saviego (1856).
** Gary Orfield, 1978, p. 199.

in California, Mexican-origin people were crowded out of the State Legislature until, by the 1880s, "no Spanish-surnamed people could be found in public office."*

Like blacks, the new Mexican American provided a ready source of exploitable labor. Considered below average in intelligence, they were thought fit only to till soil and pick fruit. In 1946 Pauline Kibbe described Chicano farmworkers in Texas as:

> But a species of farm implement that comes mysteriously into being coincident with the maturing of the cotton, that requires no upkeep or special consideration during the period of its usefulness, needs no protection from the elements, and when the crop has been harvested, vanishes into the limbo of forgotten things—until the next harvest season rolls around.**

Even the worth of Hispanos as a cheap labor source has fluctuated with the country's economic well-being. When immigrant labor was needed in the early 1920s, the Immigration Act of 1917 was temporarily suspended to allow an influx of Mexicans to fill the need. After the depression obviated that need, hundreds of thousands of Mexicans were carted unceremoniously back across the border, frequently without regard for citizenship. The "bracero" program created after World War II to import laborers was terminated in the early 1950s to protect jobs for returning veterans. This second mass deportation involved 3.8 million Mexican and Mexican-American workers. A recent editorial summarizes this unfortunate practice:

> From the beginning of the western frontier, Anglo-Americans tended to regard Mexico as a vast labor reservoir that could be tapped and turned off at the asking. Mexicans have occupied the position of Charlie Chaplin's little tramp, whom the millionaire welcomed to his swank home when he was drunk and then kicked out in the morning after he had sobered up. In prosperous

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* Annette Oliveira, 1978, p. 4.
** Ibid., p. 4.

> labor-short periods, such as during the two world wars, Mexican workers were recruited, subsidized and lavishly praised. But during three periods of slack labor markets (1920-21, 1930-35, and 1953-54), Mexican migrants were rounded up and deported, sometimes in actions so indiscriminate that legal U.S. citizens of Mexican origin were deported with them.*

Anglo-Mexican hostilities did not terminate with the 1848 Treaty of Guadalupe-Hidalgo. Violence and conflict persist in this region:

> No other part of the United States had such prolonged intergroup violence as did the border states (between the United States and Mexico) from 1848 to 1925. Even the relationship between Negroes and white Southerners offers no such overt conflict, which involved Indians and Asians as well as Mexicans. The extent of the violence--cattle raids, border looting expeditions, lynchings, civil riots, labor wars, organized banditry, filibustering expeditions, revolutions--can hardly be exaggerated.**

The year 1925 did not see the end of that struggle, nor did Anglo opinions of the "Mexicans" change radically. Oliveira, in a MALDEF publication, quotes a nineteenth century California legislator, G. B. Tingley, as expressing the prevailing attitude toward Mexican-origin workers:

> Vicious, indolent, and dishonest . . . with habits of life low and degraded; an intellect but one degree above the beast of the fields and not susceptible of elevation; all these things combined render such a class of human beings a curse to any enlightened community.***

More than a century after the formal cessation of armed Anglo-Mexican conflict, Mexican Americans still suffer marginal treatment in the work force, in housing, and in public schools.

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* Lou Cannon, Washington Post, August 5, 1979.
** Leo Grebler, Ralph Guzman, and Joan Moore, 1970.
*** Oliveira, p. 4.

Although the Puerto Rican people have been similarly treated, the effect of the law has not been within the continental United States. As a "glorified colony," as some call it, the island has greatly suffered the injustices of American jingoism. In education, for instance, language policy reversed itself several times in the short period of fifty years, 1898-1948:

> [In 1898] English was established as the official language in the schools, when neither the teachers nor the students understood a word of it. Two years later . . . Spanish [became] the medium of instruction in the first eight grades and English, from the ninth through the twelfth.*

This policy again reverted to all English in 1905. But in 1915, the new commissioner "compromised and made Spanish the teaching language in grades one through four, Spanish and English in the fifth grade, and English in grades six through twelve."** In 1934 the policy of 1900 was again in practice. However, within three years a series of changes began, so that, by 1942, Spanish was made the teaching medium in grades one through six, English was emphasized in junior high school and both English and Spanish were used in the senior high schools.*** After the disastrous consequences of these policies and the election of the first native governor in 1948, Spanish was made the medium of instruction in all grades, with English as a required second language class.

Language policy in Puerto Rico's history epitomized its subservience to the U.S. According to scholars of the Puerto Rican experience,**** the

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* Kai Wagenheim, 1970, p. 167.
** Ibid.
*** Ibid.
**** See, for example, Gordon K. Lewis, Puerto Rico: Power and Politics in the Caribbean, 1963.

island's history is replete with the vestiges of colonialism. Under these circumstances, it is not difficult to conceive how Puerto Rico did not control its educational system.

Although Puerto Rican migration to the States heavily increased after World War II, it has since fluctuated as a direct result of American economic conditions. Since the mid 1950s, the educational history of Puerto Ricans in the United States has not been altogether different from that suffered by Chicanos, post-Brown.

Nowhere is the systematic discrimination against Hispanos more obvious than in the history and current status of school desegregation.

The Process of Assimilation

Until the latter half of the 19th century, the assimilation of foreign peoples was made easy by the voluntary abandonment of their cultural ties. As immigration swelled, there arose an increasing demand for a greater equality of cultural values in American institutions.

The widely held "immigrant" analogy, the argument that recent newcomers will go through a process similar to that of previous immigrant groups, may be explanatory of the white European experience, but is not a viable model for interpreting the history of the Chicano or Puerto Rican.

Mexicanos preceded whites in the settlement of the Americas. They were eventually conquered and thrown out of their very homeland. An acculturation model does not easily fit such a historical reality. For Puerto Ricans, since the granting of U.S. citizenship in 1917, no legal restrictions have existed to and from the island of Puerto Rico. The entire island is, in actuality, a bona fide country within the jurisdiction of the U.S.

The acculturation process operates differently for groups which have undergone a historical experience of colonization. The U.S. posture toward a conquered nation (the Mexican territories) or a non-nation (as with Puerto Rico), and the psychological intricacies embedded among the conquered peoples, are certainly uniquely different than for white European immigrants or black slaves.

Some social scientists have described two ways of minority group adaptation in the United States. "One way was designed for the ethnic white minorities, the immigrants of different nationalities; the other way of adaptation was reserved for the non-white ethnic minorities."* Shedding the ethnic identity that distinguished non-white ethnic minorities from the American cultural model, if anything, "made things worse."** Acculturation for non-white minorities is, by its very nature, the adoption of a negative self-image or self-hatred. The very process is at the expense of cultural autonomy and personal integrity.

The history of the Cuban American is considerably different from that of the Chicano and Puerto Rican. The Cuban median population age is over 30 years of age as compared to that of 19-20 for Chicanos and Puerto Ricans. The Cuban educational and income level is also considerably higher than that for Chicanos and Puerto Ricans. Cubans are primarily first generation newcomers greatly aided by the Cuban Refugee Act. This Act facilitated the accommodation of many Cubans over a short period of time and greatly aided the disenfranchised upper and middle class elites who left Cuba during the Castro takeover. Consequently, their group characteristics and personal attitudes greatly vary from Chicanos and Puerto Ricans.

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* Eduardo Seda Bonilla, 1973, p. 115; also see Robert Blauner, 1972, pp. 52, and 84.

** Ibid., p. 118.

Demographic Trends

Although a great many Hispanos are concentrated in the five Southwestern States, a substantial proportion of the over 12 million Hispanos, not including the undocumented population, live in the Midwest, East Coast, and the Southeast. The three million residents of Puerto Rico are not counted in U.S. population figures.

Major demographic changes have occurred among Hispanic groups.* Since the 1970s, Mexican Americans have been moving from the Southwest. States like Ohio and Minnesota have as many Mexican Americans as Colorado and Nevada. Accompanying the out-migration of Mexican Americans from the Southwest has been the in-migration of Anglos. New Mexico, for instance, which used to be over half Hispano, now has an Hispanic population of barely 35 percent. For Puerto Ricans in the States, though more than half still reside in New York City, recent movement has been away from New York City. Cubans have been reconcentrating in Dade County which now contains about 80 percent of the U.S. Cubans in the U.S.

By all available statistics, Hispanos are highly underemployed among the nation's racial and national origin groups. Contrary to popular opinion, they are more highly qualified for the jobs they presently occupy than even whites.

In examining Hispanic concentration patterns, several additional trends should be outlined:

(1) There is a general movement of Hispanos, albeit small, out of the cities. Some of these effects naturally decrease segregation between Hispanos and whites in suburban schools.

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* Leobardo Estrada in Nuestro, 1979.

(2) Hispanos as a group are considerably younger than the average citizen. Hence more Hispanic children are expected to attend elementary school than ever before. A significant number of predominantly minority schools have been closed in many districts. This alone may suggest a decline in Hispanic and black segregation for some school districts, regardless of other factors.

These trends would suggest a natural desegregation process in the context of present mobility patterns. Yet, our reports indicate that these normal factors are being overriden. School desegregation patterns have stayed nearly the same for Hispanos the last decade.

Desegregation

Definite progress, spurred by Northern advocates, has been made in the desegregation of Southern schools. In 1964-65, only 2.2% of blacks in the South attended schools where whites were also in attendance. By the 1974-75 school year this number had increased markedly, to 85%.* However, changes in the North, East, and West have proved difficult. As school desegregation activity moved out of the South, a wave of resentment from the North and West rose to meet it. The segregation of public school students in the Southwest and Northeast is still deplorable, especially for Hispanos. Segregation of Hispanos has not lessened in public schools across the country. Enrollment statistics for the 1974-75 school year "showed that there was a slightly higher proportion of Hispanic than of black children in predominantly minority schools. Though the former were still much less likely than the latter to attend schools with almost completely minority enrollments, the trend was toward greater segregation."** In Chicago, Hispanic enrollment grew from 56,000 to a near 68,000 between 1970 and 1974, although the school system was rapidly losing students. "By the 1974-75 school year, 56% of the Hispanic children were in schools where the minority

* Ray Rist, 1979.
** Orfield, p. 205.

TABLE I.1

Hispanic Children in Predominantly Minority Schools, 1970 and 1974

Geographic Sector	Percentages 1970	1974
Northeast	84.2	84.2
South	72.6	72.8
Midwest	52.6	57.1
West	48.5	56.3
National	64.2	67.4

SOURCE: DHEW, Office for Civil Rights, May 1976. These figures are based on data available from school districts that regularly filed reports with DHEW. These districts were estimated to include 74 percent of the nation's Hispanic students.

NOTE: Schools exceeding fifty percent minority enrollment or above are defined as predominantly minority schools.

enrollment was above 90%; most were in schools that had less than 1% Anglo students."*

Analyses of data from the DHEW Office for Civil Rights** indicates that although the segregation of blacks is greater, overall, than that of Hispanos, there has been a net decrease in the proportion of blacks in isolated schools from 1968 to 1976 and a net increase in the proportion of Hispanos attending such schools during the same period.

Numerous subterfuges have been used to impede the progress of school desegregation for Hispanos. Progress on the legal front has not been consistent; at times, defying generalization. Subterfuges exist here, too. Court precedents have been confusing for Hispanos, as they also have been for many Americans. Even racial/ethnic identification has been grossly

* Orfield, p. 206.
** See Table I.1 (Vol. III).

inconsistent. In some cases, Hispanos have been counted as white and later mixed with black children as a means of claiming "racial integration."

Hispanic concerns have not been the central focus of desegregation battles. Yet, Hispanos have special problems associated with national origin minorities which add to their dilemma and these are not similar to black needs, as normally supposed. School desegregation efforts have too often ignored the special needs of Hispanic students.

To systematically document this set of conditions, subsequent chapters review the history of Hispanos and desegregation (Part II), critically examine the findings of this study (Part III),* and elaborate on an explanatory framework (Part IV).

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* Major findings are discussed in greater detail in Volumes II-IV

PART II: HISTORICAL DEVELOPMENTS

CHAPTER 2

BEFORE THE CIVIL RIGHTS ACT: A LEGAL HISTORY

Most of the legal and historical school desegregation literature focuses on litigation involving blacks and the struggle for desegregating black schools. This review of the judicial history of school desegregation focuses on the Hispanic population—their fight for civil rights and their role in the struggle for unitary public schools.

Analyses of major themes in the litigation that characterize pra- and post-Brown desegregation efforts are attempted. The purpose of these analyses are to ascertain the legal underpinnings of the current stalemate in desegregation action, and to explain why the Hispanic effort in school desegregation has been stymied. These analyses focues on a) the role the fourteenth Amendment played in Hispanic school desegregation litigation, b) the emergence of Hispanos as an identifiable minority group, c) the juxtaposition of dual, unitary, and tri-ethnic problems and solutions, d) the problem of enforcement; e) the fate of Hispanic school students as legislative, judicial, and executive support for the desegregation movement changes, and finally f) the development of bilingual-bicultural programs during the pre- and post-Brown eras.

One Hundred Years of Solitude--1848 to 1948

The 1848 Treaty of Guadalupe-Hidalgo, which ceded most of the Southwest to the United States, guaranteed to those Mexicans who wished it, citizenship, and thereby, entitlement to all rights and privileges guaranteed under the U.S. Constitution. Yet, eight years later the Supreme Court, in McKinney v. Saviego (1856) ruled that articles 8 and 9 of the Treaty did not apply to Mexicans in Texas (albeit a part of the newly expanded United States) because Texas had already won independence from Mexico.

The 13th, 14th, and 15th Amendments of the U.S. Constitution were enacted to insure black slaves their guaranteed constitutional rights. The 13th Amendment, which abolished slavery, is also in reference to the Mexican peonage and Chinese coolie trade. The 14th Amendment, while establishing citizenship for blacks, was preceded by subsequent court cases, and apparently did not intend to include Hispanos or Chinese. This exclusion was partly rectified by a Supreme Court decision: In Yick Wo v. Hopkins [118 U.S. 346, 369 (1886)] the court extended the 14th Amendment to include Chinese. The fact that Hispanos essentially lacked similar protection was made clear a few years later in Rodríguez v. State of Texas [81 F. Supp. 337, 345 (W.D. Texas 1897)]. Ricardo Rodríguez, a Texas resident, applied for U.S. citizenship but was turned down. The refusal was based on an interpretation of the naturalization laws that only blacks and whites were eligible for naturalization. Rodríguez, quite clearly, was neither black nor white. What he was, however, was made less clear by the decision. Unable to resolve the problem, the district court ruled that Rodríguez was entitled to citizenship. The court, however, carefully refrained from racially identifying Rodríguez, deciding only that he probably could not be

classified as white. Thus was the racial identity of Mexican Americans launched into a "neither-nor-but-probably-not-white" limbo.

Identification as something or someone is a crucial ingredient in a civil rights issue: to be protected by a law, a group must be included in the law. The 14th Amendment therefore was not automatically extended to include Hispanos as a racial group, nor as "white."

The Treaty of Guadalupe-Hidalgo was followed by violence and conflict between Anglos and Mexican Americans. This prolonged intergroup violence, waged during the second half of the 18th century, carried well into the 19th century, when more subtle and more pervasive forms of Anglo superordination were also being imposed on Mexican Americans in the Southwest. The subordination of the Mexican American population was being carved into what would become prejudicial and discriminatory treatment of Chicanos which pervaded all aspects of social and economic interaction, from housing covenants restricting the areas in which they could live to policies stipulating where they could swim or eat, and who they could marry. Alcalá and Rangel (1972) report that Chicanos "suffered from invidious discrimination at all levels of interaction with the dominant society."*

Perhaps the most prominent form of subjugation, and certainly the one with which we are most concerned here, is the early and systematic segregation of Chicano children in public schools. Texas became a State in 1876 and wasted no time in mandating segregated schools. The 1876 Texas State Constitution declared that "separate schools shall be provided for the

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* Carlos M. Alcalá and Jorge C. Rangel, 1972, p. 312.

white and colored children and impartial provision shall be made for both."* This provided ample encouragement for the maintenance of the soon-to-be-notorious "Mexican school," typically described as "a dilapidated 2 or 3 room building [where] the toilets were unscreened and the grounds were poorly kept."** Alcalá and Rangel detail discrimination against and segregation of Chicano school children in the Texas schools. For example, segregation was justified in one Texas county because, according to school officials, "They are an inferior race."*** Public school segregation was sanctioned by the State constitution. It is important to note the use of the term "colored" in the State constitution. The practice of subsuming Mexican Americans under that generic guise for the purposes of segregation would later pose a monumental problem for school desegregation. Sanction for the segregation of Mexican Americans throughout the rest of the country would come from the Supreme Court.

The Plessy Era

Until Brown, the landmark case that set the standard and defined the law on segregation was Plessy v. Ferguson [163 U.S. 537 (1896)]. This Supreme Court decision was to stand for 58 years. In it, the Supreme Court:

> granted constitutional protection to deliberate racial segregation of blacks and whites with its separate but equal ruling. The Court explained that a race can be politically and civilly free even though legislation authorizes segregation of that racial group in all fields of social and economic endeavor. (NIE unpublished paper on bilingualism and migrants)

Plessy gave constitutional sanction to legislation that authorized

* Alcalá and Rangel, p. 312.
** 1925 Texas Educational Commission quoted in Oliveira, p. 4.
*** Alcalá and Rangel, p. 307.

segregation. In the field of education, Plessy would figure prominently since it allowed for the maintenance of separate but equal systems for segregated groups.

The first test of Plessy in the schools came only three years after the decision. In Cumming v. Richmond Board of Education [U.S. 175, 528, 20 (1899)] a group of black students from Augusta, Georgia, demanded that public support for two white high schools be discontinued inasmuch as the only Negro high school had been closed. On the basis of Plessy, the request was denied, and the denial later was affirmed by the Supreme Court. Thirty years later, in Missouri ex rel Gaines v. Canada [305 U.S., 337 (1938)] (discussed later) Plessy once again was upheld. In this case a young, qualified black student was denied admission to the University of Missouri Law Schoool. Arguing that there were no separate facilities for blacks, Gaines sued for admission. The case was eventually argued at the Supreme Court, which decided that either the school would have to admit Gaines or provide equal facilities. The effect of that not-quite-victory was diminished when Gaines disappeared shortly after the decision and was never heard from again.*

Although Mexican Americans were not an issue in the Plessy litigation, reverberations from the case would affect all minority groups, recognized and otherwise. The practice of treating Mexican Americans as "colored" for the purposes of school segregation, as was done in Texas, would become widespread; in fact, a tri-ethnic system ensued. Throughout much of the Southwest the "neither-nor" racial group would be segregated in a school system separate from both blacks and whites.

*See Wilson in The Black Law Journal, 1972, pp. 68-87.

The tri-ethnic system of separate schools for Anglos, blacks, and Mexicans flourished in what Alcalá and Rangel (1972) call the "formative period" of the Mexican school (1920-40). Virtually every place where there were school-age Mexican children, Mexican schools were created to handle them —even when those children lived a considerable distance from the nearest Mexican school. Between 1922 and 1923, and again between 1931 and 1932, the number of Mexican schools doubled; by 1940-42 separate schools for Mexican Americans were maintained by at least 122 districts in 59 widely distributed and representative counties across Texas (p. 314). These were schools for elementary students. Chicanos were legislated into separated schools for the first three grades and then strongly discouraged from continuing. Discouragement was so effective that in Pecos, Texas, for example, there was no need for a separate high school: no Mexican Americans attended junior or senior high school before 1938 (Oliveira, p. 3).

Discrimination against Mexican Americans was not confined to Texas. The publication, MALDEF: Diez Años (1978), cites historian Charles Wollenberg's claim that "by the end of the 1920's . . . Chicanos were the most segregated group in the California public schools." Alcala and Rangel (1972) note that the Sonora (California) Independent School District had a 1938 rule requiring that all Mexican children be enrolled in "Mexican schools" (p. 357).

Ambiguity over racial identity made Mexican Americans particularly vulnerable to race discrimination, since they could be alternately classified white or non-white. Chicanos were not the only group to suffer from ambiguous racial classification in Texas. In 1927 a case involving a Mississippi Chinese girl who had been classified "colored" and, therefore,

required to attend a "colored" school, was brought before the Supreme Court. The question concerned the legitimacy of labeling a Chinese "black." In Gong Lum v. Rice [275 U.S. 78, (1927)] Chief Justice Taft affirmed the lower court decision and held that the child should indeed go to a black school. Although the Plessy doctrine was not specifically being contested, the Chief Justice added a reminder that "separate but equal" was still the law of the land. Since there was "no Negro school nearby which . . . [the Chinese girl] could attend,"* the "separate but equal doctrine apparently was still the law of the land, lack of equal facilities notwithstanding.

In 1930 the first discrimination case involving Mexican Americans came to court--Del Río Independent School District v. Salvatierra [33 S.W. 2d 790 (Texas Civ. App., San Antonio, 1930), cert. denied, 284 U.S. 580 (1931)]. The plaintiffs argued that actions of local school officials effectively segregated children of Mexican and Spanish descent from children of "other white races." The trial court, agreeing with the plaintiffs, granted an injunction and prohibited the segregation of children of different parentage within the white race. On appeal, the Texas Court of Civil Appeals agreed with the lower court and ruled that "school authorities have no power to arbitrarily segregate Mexican children, assign them to separate schools, and exclude them from schools maintained for children of other white races, merely or solely because they are Mexican." In taking action that segregated the students in the absence of a state law permitting their segregation, school authorities were exceeding the bounds of their power. It is important to recall that the 1876 Texas State constitutional mandate stipulated segregated schools for colored and whites and, while it was under

*Cliff, 1952, p. 129.

the auspices of the mandate that separate schools for Mexican Americans were maintained, the Texas Civil Court of Appeals was now ruling against that action since Mexican Americans were "other whites."

Having held that in the absence of a State law segregation of children solely on the basis of ancestry was discriminatory and unconstitutional, the appeals court went on to find that segregation such as that found in the Del Río Independent School District could be rationally justified through an English language deficiency and, therefore, the school board in isolating language-deficient children, had not exceeded its authority. Thus, the decision was reversed and the injunction dissolved. The court further ruled that segregation in separate classrooms, or even in separate schools, through the third grade was well within the province of the local school boards, so long as that segregation was based on language deficiency and not on racial grounds. The court provided grounds for the non-arbitrary segregation of Mexican American children and those of other Spanish ancestry. School boards need merely profess segregation of children on the basis of language deficiency. The stipulation concerning segregation through the third grade stimulated the practice of holding Hispanic students back in the early grades. In Driscoll, Texas, for example, it was customary to hold Mexican American children in the first grade for three years before advancing them to the second grade.*

The ramifications of the Del Río Indpendent School District decision were multiple. Its findings and outcomes were to set the pace for future court battles in several respects. First, Mexican Americans were classified as "other white." By classifying Mexican Americans as "other white," the case was made that there was no State law providing for the segregation of

* See Guadalupe Salinas in El Grito, 1971.

of Mexican-Americans. Secondly, it was argued that in the absence of such a State law, segregation was arbitrary and, therefore, not unconstitutional. Thirdly, the judge's ruling that there had been no intent to discriminate foreshadowed the de jure/de facto distinction. And finally, the ruling that segregation for purposes of "language deficiency" was legitimate grounds for segregation had ramifications that would long reverberate in Hispanic desegregation litigation.

It was 17 years after Del Río before another significant suit involving Hispanos was brought. There is evidence* that this lapse was attributable not to any amelioration of conditions in the schools but to an environment hostile toward litigation and integration. When an Hispanic segregation suit resurfaced in the courts, this time in California, significant changes occurred. Like the Del Río case, the decision was based on the absence of a state law permitting Mexican American segregation, but here, for the first time, the 14th Amendment was invoked to protect Mexican Americans, and Plessy would be dealt a serious blow. An important presage to Brown was introduced. Unfortunately, the racial identity of Mexican Americans was not resolved.

In the California case—Méndez v. Westminister School District of Orange County [64 F. Supp. 544 (S.D. Cal 1946), aff'd 161 F 2d 744 (9th Cir 1947)]—it was argued that the segregation of Mexican-Americans in California public schools was unconstitutional. The California Supreme court agreed and ruled that "separate schools with the same technical facilities" did not meet California's public school laws. In its decision, the court observed that "a paramount requisite in the American system of

* Alcalá and Rangel, p. 335.

public education is social equality. It must be open to all children by unified school association regardless of lineage."

The ninth circuit court affirmed the California Supreme Court's decision, ruling that segregation of Mexican Americans was a violation of due process and equal protection. The Federal court's reasoning was important since Mexican Americans were considered white, and since there were no State laws requiring segregation. It was therefore unconstitutional under the 14th Amendment to segregate Mexican Americans. In upholding the ruling of the lower court that "separate schools with the same technical facilities" for Mexican American students was not permissible, the circuit court implied that Plessy did not apply to Mexican Americans. However, the issue of Hispanic racial identity remained adrift; in fact, the circuit court added a new twist to the racial identification issue. It found that segregation of Mexican Americans in California is not provided for by law, and ruled that only children of "one or another of the great races of mankind" can legally be segregated. Segregation of children within a single racial group was illegal. Remember, however, that in Rodríguez (1897) Mexican Americans were racially identified as "not-quite white."

Although the Méndez decision had great significance, it was, however, valid only within the ninth circuit.

Delgado v. Bastrop [Civ Act. no. 388 (W.D. Texas, June 15, 1948)], which followed closely on the heels of Méndez, dealt yet another blow to the "separate but equal" doctrine, now 52 years old. The Delgado case also undermined the "language deficiency" subterfuge established by Del Río. In Delgado the plaintiffs argued that the segregation of Mexican American children from "other white" children in public schools was illegal because

there was no State law allowing it. The "other white" stand was reaffirmed—and the strategy worked. In its decision, the U.S. District Court held that there was arbitrary and discriminatory segregation in the school district in violation of the 14th Amendment. Maintenance of separate schools for Mexican American students was deemed unconstitutional, language deficiency notwithstanding. The court prohibited the Texas State superintendent "in any manner, directly or indirectly, [from] participating in the custom, usage, or practice of segregating pupils of Mexican or other Latin American descent in separate schools or classes." Although this was later softened to allow language classes on the same campus for pupils shown by standardized tests to be deficient in English, Delgado was a resounding defeat for the local school authorities. School districts having rules and regulations requiring the segregation of Mexican American students had to discontinue the practice. However, other subterfuges (including language-deficiency grouping and attendance-zone gerrymandering) would diminish the effects of the 1948 Delgado decision.

The ambiguity over the racial status of Mexican Americans was highlighted by Texas Superintendent of Public Instruction, L. A. Woods, who stated: "Colored children has been interpreted by the Texas courts and the Texas Legislature as including only members of the Negro race or persons of Negro ancestry. The courts have held that it [the term "colored"] does not apply to members of any other race."* Essentially what happened was that school authorities "uncolored" Chicanos, removing them from the

*Alcalá and Rangel, p. 337.

category of "other colored" and placing them in the category "other white." The Delgado decision became the basis for extending the 14th Amendment. Chicanos are therefore protected by the 14th Amendment as "other whites," not as a separately identifiable racial group in their own right. One hundred years after being incorporated by treaty into the United States as citizens, Mexican Americans were still not recognized as an identifiable racial group.

In Arizona, González v. Sheely [96 F. Supp., 1004 (D. Arizona 1951)] restated Delgado in some respects, but more strongly. In González, the court found that segregation of public school children of Mexican descent deprives them of their constitutional rights of due process and equal protection under the law. Therefore, such action is in violation of the 14th Amendment. Furthermore, segregation for the purposes of language training must be strictly based on indiscriminate individual foreign-language impediments, irrespective of racial ancestry. The court rebuked the school district for unwarranted segregation on the basis of language handicap and stated that language deficiency does not justify continuous segregation of children of Mexican ancestry.

This case was significant in its finding that separate schools for Mexican American public school children deprives them of their constitutional rights. The district judge reasoned that "segregation suggests inferiority where none exists." This principle unequivocally challenged Plessy, though what was established in this case concerning discrimination against Mexican Americans would not become law until the Brown decision three years later.

THE ROAD TO BROWN

Méndez and Delgado did little actual damage to the Plessy bulwark. Since these victories were predicated on the "other white" racial identification of Hispanos, the separate but equal doctrine basically was not applicable. Blacks were having some measure of success and making important inroads into the separate but equal standard. Gaines required that the University of Missouri law school either admit the black plaintiff or provide equal facilities for him, but the momentum was lost when Gaines himself disappeared. After that (the State of Missouri having won time even if its case had been lost), Missouri and other Southern States rushed to provide equal facilities for blacks before any similar rulings could be made, rulings which, while upholding Plessy, would increase pressure on the States to provide equal facilities. V.A. Clift (1952) succintly, if sardonically summarizes the motivation for the great investment in "Negro" (sic) educational facilities in the post-Gaines 1940s period.

> Either because of a strange fondness for the Negro and his educational welfare or because of an abhorence for the idea of further litigation challenging the "separate but equal" doctrine, the entire South began to spend an unprecedented proportion of its income for the education of Negro children in public schools (p. 129).

Seemingly not content with the increased effort to comply with the spirit of Plessy, black students continued to challenge educational institutions in the South. Two such cases were ultimately decided in the

at the hands of the State as students of other races, "it did strip Plessy of much of its power. The Sweatt and McLaurin decisions mandated that "equal" be a precondition to the dual structure and if equality could not be achieved, then "separate" could not be upheld. The restrictions the Court imposed for qualification of "equal" were such that compliance was extremely difficult. Clift claims that after Sweatt "few if any state Negro (sic) colleges in the South could meet the requirements posed by the Court in its decision."* Cumulatively, "these decisions destroyed the fallacious underpinning of the 'separate but equal' doctrine and formed the rationale for the principles enumerated in Brown v. Board of Education. [347 U.S. 483, 75 S. Ct. 686 (1954)].**"

* Clift, 1952, p. 130.
** Robert L. Carter in The Black Law Journal, 1971, p. 198.

The Brown Decision of 1954

The Brown decision did not make a sudden and unexpected appearance. It evolved out of important antecedents. In the 1954 decision the Supreme Court pointed out that it had already heard six separate cases involving the Plessy doctrine, and that in all of those cases the validity of the doctrine was either left unquestioned or simply evaded. The Court acknowledged that the question could be begged no longer—that the doctrine of "separate but equal" set forth by Plessy and held to be law ever since had to be addressed.

> We come then to the question presented: Does segregation of children in public school solely on the basis of race, even though the physical facilities and other 'tangible' factors may be equal, deprive the children of the minority group of equal education opportunities? We believe that it does.

In overturning Plessy, the Court stated:

> Any language in Plessy v. Ferguson contrary to this finding is rejected. We conclude that in the field of public education the doctrine of 'separate but equal' has no place. We have now announced that segregation is a denial of the equal protection of the laws.

The Brown decision was truly a landmark decision in that it made supreme law a proposition already stated in González v. Sheely (1951)—dual educational facilities are unequal. Any prevailing dual educational systems would have to be dismantled and replaced by a unitary system. Recognizing that "full implementation of these constitutional principles may require solution of varied local school problems," the Court therefore mandated that:

> School authorities have the primary responsibility for elucidating, assessing, and solving these problems; courts will have to consider whether the actions of school authorities constituted good faith implementation of the governing constitutional principles. Because of their proximity to local conditions and the possible need for further hearings, the courts which originally heard these cases can best perform this judicial appraisal. Accordingly, we believe it appropriate to remand the cases to those courts.

In the Wake of Brown: A Barren Decade

If Brown had little impact on black students during the post-decision decade, it had even less impact among Hispanos. Brown stated that education must be available to "all" children on equal terms, but other-than-black/white dual systems were overshadowed. Hispanos were not specifically mentioned, and after Brown, Hispanos were conspicuously absent in desegregation litigation. Racial discrimination and school segregation was narrowly interpreted to include only blacks and whites, but the objective of Brown was to establish unitary school systems and no doubt that decision was intended for all dual systems. However, dual systems of Hispanos and Anglos, maintained throughout much of the Southwest, were virtually ignored.

In discussing post-Brown Hispanic desegragation litigation, it is important to recall that the strategy employed to argue pre-Brown Hispanic discrimination cases stressed violation of the 14th Amendment because it is segregation in the "absence" of state law. Blacks demanded "equal protection of the laws," arguing that "segregation in the presence of state law was inherently unequal."* Attorneys for Hispanos continued to argue along the "other white" line. By arguing "other white," Hispanos have

*Alcalá and Rangel, p. 342.

reinforced a wall long ago built and well maintained. In Texas, for example, courts held that nationality and race are not identical under the 14th Amendment and that since Chicanos are white (distinguishable, theoretically, from other whites only on the basis of national origin) they could not claim "racial" discrimination.

Two weeks before the Brown decision, the Supreme Court made an important ruling concerning discrimination against Chicanos. In Hernández v. Texas [347 U.S. 475 (1954)] the Court held that Chicanos were protected by the 14th Amendment. The Court ruled that if a particular "class" is singled out for different treatment, then it deserves protection under the 14th Amendment. That Amendment, the Court said, is not just for whites and blacks—an important ruling in light of the Méndez case. Another important outcome of Hernández was that the plaintiff relied on "statistical inferences rather than direct evidence of discrimination" (at 344).

In the decade after Brown, there were only two noteworthy cases concerning Hispanos—Romero v. Weakley [131 F. Supp. 818, 820 (San Diego, CA 1955) rev'd 226 F. 2d 399 (9th Cir. 1955)] and Hernández v. Driscoll Consolidated Independent School District [2 Race Rel. L. Rep. 329 (S.D. Texas, Jan 11, 1957)]. In Romero a complaint was brought by Mexican Americans and blacks who were suing the El Centro School District for "ethnic and racial discriminatioin by regulation, custon, and usage." The district court dismissed the complaint, indicating that Brown involved constitutional and statutory provisions and did not apply to situations in which only customs and regulations were alleged. The ninth circuit court reversed and remanded the case. It held that when the complaint alleged segregation of public school facilities on the basis of race or color, it

raised a Federal constitutional issue requiring the district court to exercise its jurisdiction even in the absence of specific constitutional and statutory provisions. The circuit court's considering the complaint on the basis of race and color was significant in terms of Hispanic racial identification. It challenged the practice of evading legal compliance in desegregation by classifying Chicanos as white and then mixing blacks and Chicanos together in "desegregated" schools, while whites continued to attend all-Anglo schools. However, the case ultimately was settled out of court.

The Hernández case concerned the selection of students for language deficiency classes, an issue that had become increasingly volatile since the Del Río decision. Special assignment of Hispanic children to language classes had become a primary rationale for segregating them even though Delgado and Méndez required the administration of standardized tests and prohibited continuous segregation of these children beyond the third grade. Like other Texas school districts, the Driscoll district generally required most Mexican American students to spend three years in first grade, ostensibly due to language deficiency. The court held that the Driscoll district was assigning students to language deficiency classes on a racial rather than a merit basis, and that this practice constituted "unreasonable race descrimination." Significantly, the court referred to Chicanos as a "race."

The decade after Brown was a time of relatively unproductive struggle for blacks. Hispanos also made little progress in desegregation efforts during the ten years after Brown. What progress there was, for both blacks and Hispanos, was continuously thwarted by such evasive tactics as "freedom of choice" and "voluntary transfer" programs, gerrymandering, and "ability tracking."

CHAPTER 3

THE JUDICIAL, EXECUTIVE, AND LEGISLATIVE DEBACLE

Implications of Brown

Ten years after Brown it had become clear that the courts alone could not force desegregation. A more active enforcement agency was required. That need was filled in 1964 with the passage of the Civil Rights Act, which granted the Department of Health, Education, and Welfare, Office of Civil Rights (DHEW/OCR) the power to seek out school districts that were not in compliance with the law. Districts must come into compliance or lose Federal funds. This chapter analyzes the impact of the Civil Rights Act, on the desegregation movement, and traces the enforcement issue from its dynamic beginnings in 1964 to its current state. It was the Civil Rights Act of 1964 that served as a catalyst for major change by injecting administrative action into desegregation efforts. The Civil Rights Act forbade payment of Federal funds to school districts that were still practicing discrimination, and authorized the Justice Department to litigate civil rights cases. It effectively took pressure off the courts as the sole enforcers of compliance with Brown and made DHEW the enforcement agency.

The threat of cutting off funds proved remarkably stimulating to the black/white desegregation effort, at least for awhile. There was a flurry of activity, and the percentage of black students enrolled with whites in desegregated schools in the deep South rose from 2.2% in the 1964-5 school year to 86% ten years later.*

During this period, the courts also took on a more active role to eliminate dual school systems. Now they were to determine those plans best suited to produce integration for all school children.** The courts also took action against techniques used to avoid desegregation. Freedom of choice plans, allowing students to attend the school of their choice, for example, were found to be unconstitutional in Green v. County School Board of New Kent County, Virginia [391 U.S. 430 (1968)] if they resulted in the perpetuation of racially separate schools. In Alexander v. Holmes [396 U.S. 19 (1969)] the Court required immediate desegregation once a violation had been found.

The second decade after Brown was even less dazzling for Hispanic desegregation. Momentum in black desegregation lost its steam in the early 1970s, but never fully got underway for Hispanos. Previously unresolved problems, reaching back to Del Río (1931) and Delgado (1948), had not stayed buried. They had surfaced in Driscoll (1954) and would again ten years later (but not for the last time) in Chapa v. Odem Independent School District [Civ. Act. No. 66-C-72 (S.D. Texas, July 20, 1967)].

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* Rist, 1979, p. 24

** Carter, p. 201. (See, for example, Milliken (1974), Swann (1971), Keyes (1975), discussed later.)

As if by rote, the Chana suit was fought in "other white" language, challenging the school board's subterfuge segregation tactics. Although the Chicano plaintiffs were victorious in that the court required the school district to produce additional evidence that its language deficiency tests,* were nondiscriminatory, the result was that Hispanos were more deeply entrenched than ever in the "other white" argument.

Hispanic desegregation seemed to stagnate in the "other white" strategy used since the 1930s to argue violation of due process. After Del Río, the absence of laws provided the bases for arguments against school districts. Now, school districts are turning the argument around: if there are no segregation laws, the segregation is de facto, not de jure. Since Brown requires de jure segregation as a prerequisite for relief, school districts argued they could not be held responsible. Had Chicanos, like blacks, argued for equal protection rather than continued to follow the "other white" approach [the Hernández (1954) case notwithstanding], the de facto/de jure distinction might have been avoided. That has become a major stumbling block in Hispanic desegregation cases.

Alcalá and Rangel (1972) sum up the situation this way:

> But while bare absence of such a state law once sufficed for Chicano attorneys to prove that segregation of Chicanos exceeded school officials' statutory powers, it is no defense to an equal protection suit. In a suit based on equal protection, one need show only that past segregation by school officials was under 'color of law.' 'Color of law' extends to actions under guise of state authority regardless of statutory powers (p. 348).

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* Since Delgado (1948) language proficiency tests had provided an excellent means of circumlocution.

De Jure and De Facto Segregation

When desegregation encroached on the North and West, resistance burgeoned and obstabies were faced in the courts, in the Congress, and in the White House. In the courts there were renewed efforts to prove de facto segregation, especially of Hispanos, and these efforts proved to be an effective tactic. In the North and West the Federal courts simply held that Brown did not apply. Judge Skelly Wright, ruling on the de jure/de facto issue in Hobson v. Hansen (1967), claimed that the school district should be required to remedy segregation, whether de jure or de facto; the issue was not Brown's requirement for statutory discrimination, but the fact that segregation denied students equal educational opportunity. Nearly ten years later, Judge Trobiner of the California Supreme Court said much the same thing—that school boards in California bear a Constitutional obligation to take reasonably feasible steps to alleviate school segregation, whether such segregation is "de facto" or "de jure." Trobriner pointed out that, with regard to the Constitutional rights of school children, there is no significance to the de facto/de jure distinction [Crawford v. Board of Education Los Angeles 551 Pacific Reporter, 2d series; 17 Cal 3d 280 (1976)]. In the interim, however, the issue dominated many desegregation cases and was significant in the Southwest, where desegregation cases involved Hispanos.

When desegregation gradually moved out of the South and into the North and West, the fervor of the mid 1960s quieted. The predictions of Southern Senators—that legislators outside the South fervidly lauding the desegregation cause would change their tune when "their" constituencies were affected—became true. In 1967 Southern legislators won a measure which would require

DHEW to look at segregation throughout the country rather than concentrating on the South.* The following year, Congress accepted a proposal committing half of DHEW's staff to Northern desegregation. The anti-desegregation pace quickened. Each year from 1966 to 1977, the House passed at least one amendment to restrain school integration.** What has been described as a crusade to wipe the segregationist smirk off the face of the South ended when the North got involved.

The election of the Nixon administration in late 1968 spelled disaster for later enforcement efforts. Nixon promised a more conservative Supreme Court and he campaigned strongly against busing, attacking it as a poor method to achieve integration in the schools. By 1971 the White House openly warned Federal officials that they would be fired if they continued to urge busing.*** Busing was posited as the antithesis of quality education, making desegregation and quality education mutually exclusive.

Nixon managed to systematically strip DHEW of the power to enforce the laws. The Office for Civil Rights became so lax in its enforcement of the Civil Rights Act and had curtailed its investigations to such an extent that a law firm brought suit against the Department. In Adams v. Richardson, [351 F. Supp. 636 (U.S. Dist. Ct., D.C., 1973)], DHEW/OCR was found guilty of subverting the law and was ordered to "resume enforcement in certain neglected cases." The District of Columbia circuit court of appeals unanimously upheld the decision and expressed the view that "HEW has consciously and expressly adopted a general policy which is in effect an an abdication of its statutory duty." Executive pressure was as good an excuse as any for Congressional support to slacken and anti-desegregation

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* Lorenzo Middleton, 1979.
** Gary Orfield, 1978, p. 239.
*** Middleton, 1979.

sentiment to grow, and such sentiment was not restricted to Republicans or Southern Democrats. By 1975, when Coleman announced that he had erred in his 1966 pro-busing declaration, the anti-desegregation camps had swollen to include Northern "liberals"--e.g., Senators Biden, Eagleton, Brown, Church, and Jackson.

Nixon tried to slow down the enforcement of desegregation plans already ordered (actions taken prior to his having rendered DHEW impotent), but his hand-picked Chief Justice, Warren Burger, reacted strongly. Burger "summarily rejected the administration's insistance on delay and ordered that plans be carried out at once."* Following this ruling, the House tried to impose "absolute restraints on the courts" in 1972.** Not only were busing prohibitions rife, but by cutting funds in 41 of the country's largest cities (including New York, Chicago, Los Angeles and Cleveland, cities with large Hispanic populations), Congress also stymied efforts to improve the quality of education in barrio schools.*** The degree to which the Congress had been converted to anti-desegregation, if not anti-civil rights, became glaringly obvious in 1974 when Congresswoman Holt's proposed amendment to the Civil Rights Act called for striking out provision for allowing the withholding of Federal funds as a means for forcing school systems into compliance, and for prohibiting DHEW's collection of ethnic statistics to determine the degree to which a system is segregated. The bill was only narrowly defeated in the Senate.

The continuing effort in the Senate to halt the desegregation process before it marched any further prompted Senator Humphrey in 1975 to remark, "The message is that the Senate, the last bastion of civil rights support,

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* Orfield, p. 244.
** Ibid., p. 259.
*** Ibid., p. 268.

has now joined the President and the House in opposing the desegregation of towns and cities across the North and West."*

The peak of Federal court support for desegregation had passed, and the twilight had begun. Weinberg (1977) reflects:

> Except for the historic moment of May 17, 1954, the high court was a vigilant advocate of desegragation only from 1968 to 1973. Before then it permitted non-enforcement of Brown to become the rule. After, it began to waver.

Denver

Denver is a multiethnic city with a public school system in which Hispanos are numerous. In a desegregation suit, Keyes v. School District No. 1 (1973), it was established that there had been intentional segregation against Hispanos. It was ordered that Hispanos were to be included in a desegregation plan. The action in Keyes was to have important implications for future Hispanic litigation and desegregation.

The Tenth Circuit Court defined Mexican Americans as discriminated against and segregated in a manner similar to blacks, and stated that to the extent Hispanos are isolated in concentrated numbers, a school in which this has occurred is to be considered a segregated school. Allowing that "a meaningful desegregation plan" must help "Hispanic school children to reach the proficiency in English necessary to learn basic subjects," the court would not approve a plan that extensively provided for bilingual/bicultural education at the expense (it appeared to the court) of desegregating predominatly Hispanic schools. The court stated: "Bilingual education . . . is not a substitute for desegregation." That ruling would figure

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* Orfield, p. 273.

prominently in the development of bilingual/bicultural programs which we will later discuss in this chapter. The Keyes case also delineated the meaning of de jure segregation and set the standard for assessing segregation in the North and West. The Supreme Court defined de jure segregation as "a current condition of segregation resulting from intentional state action. . . . The differentiating factor between de jure segregation and . . . de facto segregation . . . is purpose or intent to segregate."

The court only found intentional discrimination against blacks. The district court did require provision of bilingual/bicultural instruction because there was a State law to that effect and directed the school district to "take affirmative action regarding bilingual education."* However, no deliberate discrimination against Hispanic students was found. The Milliken (1974) case typifies a trend in bilingual/bicultural instruction and is characteristic of changing attitudes about desegregation on the one hand and bilingual instruction on the other.

Development of Bilingual/Bicultural Education Programs

Court battles over what role foreign languages should play in the nation's schools are not new, although they are now more widely publicized. For example, in 1919 Nebraska enacted a statute (the Siman Language Law) forbidding foreign language instruction in "public, private, or parochial (schools) to any child who had not completed the eighth grade."** A suit was filed, and when it reached the Supreme Court the law was declared unconstitutional. The majority decision declared:

* Edward C. Bolmeier, 1973, p.15.
** Ibid. p. 16

> The protection of the constitution extends to all, to those who speak other languages as well as those born with English on the tongue. Perhaps it would be highly advantageous if all had ready understanding of our ordinary speech, but this cannot be coerced by methods which conflict with the constitution.*

In spite of this Supreme Court ruling, the district court held in Del Río that segregation of Mexican Americans on the basis of English-language deficiency was justified segregation. The Delgado (1948) decision and the "unreasonable race discrimination" later found in the language deficiency programs in a Texas school district [Hernández (1957)], were more in line with the 1919 Supreme Court decision. But throughout this early period of language training programs, special language classes provided a means by which Hispanos and whites could "legally" be segregated in the schools.

When the achievement test standard was instituted it was abused with regularity to confine even those Hispanic children who were not language deficient with those who were—a practice which was to continue despite efforts by some courts to regulate it.

In Chapa (1967) the school board argued that Mexican Americans were segregated because of language deficiency determined on the basis of achievement tests, the method established by Delgado. The court questioned the "properly administered" achievement test system for classifying language deficient students. In Diana v. State Board of Education [Civ. Act. No. C-70-37 RFP (N.D. Cal., Feb. 3, 1970)] it was charged that English verbal skills weighed heavily in California's intelligence tests, resulting in an overrepresentation of Hispanos in remedial classes. The court agreed that this was discriminatory, and required that non-English and limited English proficiency students be tested in both their first language and in English.

*Bolmeier, p. 16.

The passage of the Civil Rights Act did little, at first, to curtail language discrimination and segregation. Title VI prohibited discrimination on the basis of national origin, of which language is considered a part, and provided for bilingual teaching in the schools to ensure equal educational opportunity, but little was done to enforce the clause or guard against its misuse. Then, in 1968, the Bilingual Education Act (Title VII) was passed and the Federal Government agreed to finance a limited number of experimental programs in bilingual education. The scope of the programs was insufficient even to accomodate needy foreign language speaking. On May 25, 1970, DHEW issued a memorandum which made clear its intent to enforce Title VI.

> Where inability to speak and understand the English language excludes national origin minority group children from effective participation in the educational program offered by a school district, the district must take affirmative steps to rectify the language deficiency in order to open its instructional program to these students.*

Provisions aimed at safeguarding the rights of national origin minority students were viewed by desegregation advocates as an immediate threat. For example, desegregation advocate Orfield states that DHEW was moving from desegregation toward closely scrutinizing minutia to ensure comparability between schools:

> When HEW officials talked about 'equal educational opportunities' in 1968 everyone understood it to mean remedying unconstitutional segregation of black children. The 1968 guidelines had included sections of equal services but no hint that this was the main goal. Four years later, the same phrase described the goal of offering separate, specialized instruction, largely in a distinctive language for various linguistic minorities.**

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* DHEW/OCR, May 25, 1974 Memorandum by Stanley Pottinger.
** Orfield, p. 299.

Orfield believed that DHEW was actively campaigning for equal educational environments and the provision of bilingual/bicultural education. "HEW demanded not only bilingualism, bilingual staff recruitment, and an end to the use of unfair tests, but also development of a curriculum respecting Hispanic culture and continuing in both languages."*

Bilingual education programs were first mandated as part of an overall desegregation remedy in U.S. v. Texas (San Felipe-Del Rio).** This was the first desegregation plan to require curriculum changes calling for bicultural curricula, bilingual counseling, bilingual/bicultural staffing, and continuing instruction in the student's native language as well as English.

The Houston plan also called for bilingual/bicultural education. In 1970 the court ruled that:

> No remedy for the dual system can be acceptable if it operates to deprive members of a third ethnic group of the benefits of equal educational opportunity... To exclude Mexican Americans from the benefits of tri-partite integration in the very act of effecting a unitary sustem would be to provide Blacks with the benefits of integration while denying it to another... group on the basis of ethnic origins.

Referring, then, to the special needs of the Mexican American students in the school district, the court went on to say:

> With regard to those students already identified as requiring bilingual education, or who are otherwise taking part in such education now . . . shall in the course of implementing this decision insure that those students will be placed in school in sufficient numbers to allow the program to continue; and shall insure that the program will not be reduced or cut back as to those students presently receiving it.

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* Orfield, p. 303, emphasis added.

** 342 F. Supp., 24 (E.D. Texas, 1970); afford per curium, 466 F. 2d 518 (5th Cir. 1972).

Curriculum changes were also mandated in Arvizu v. Waco Independent School District [496 F. 2d 1309 (5th Cir. 1974)] in which the court noted that tri-ethnic school systems had too often been desegregated by mixing Mexican Americans with blacks, "thus denying both groups the benefit of any meaningful desegregation." Bilingual/bicultural education was required as part of the remedy.

While most of the bilingual/bicultural activity in the country was taking place in areas with high concentrations of Spanish speakers, the landmark legal case came from the Chinese in San Francisco [Lau v. Nichols, 414 U.S. 563 (1974)]. This class action suit charged that non-English speaking students were not afforded the benefits of equal educational opportunity in violation of their rights under the U.S. Constitution, the California Constitution, and Title VI of the Civil Rights Act. The lower courts ruled that provision of equal facilities, books, and teachers was sufficient to comply with the legal provisions, and there was, therefore, no discrimination. The Supreme Court reversed the lower court's decision finding that the school system did, in fact, discriminate against non-English speaking children, and ruled that failure to offer instruction in the language understood by the pupils was in violation of the rights of those children under the Civil Rights Act of 1964. Under this Act, school systems have an obligation to provide students who are unable to speak and understand English "meaningful opportunity to participate in their school's instructional program."

Reverberations from Lau were immediate and widely felt. Violations of Title VI became the basis for equal educational opportunity suits, initiated on the grounds of national origin discrimination, and suits were decided in

rapid succession. Circuit courts in the West and Southwest were especially busy deciding cases involving Chicanos. Hispanos in the North and East were also becoming increasingly active in the push for bilingual education. This trend would gain momentum in the post-Lau years and become important in the desegregation cases in those respective regions.

Plaintiffs in Serna v. Portales Municipal Schools [351 F. Supp. 1279 (D.N.M. 19-2); 499 F. 2d 1147 (10th Cir 1974)] had long been challenging the monolingual English instruction offered in the schools of Portales, New Mexico but with little success. MALDEF filed a suit and in 1972, a New Mexico court held that bilingual/bicultural education was required for Mexican American students. The case was appealed and held up until 1974 when the tenth circuit court affirmed the lower court's ruling and the children started attending bilingual/bicultural classes.* Also in 1974 the district court in Detroit ordered the school district to "take affirmative action regarding bilingual education as part of the obligation of the school district to remedy the effects of past segregation" in Milliken (1974).** In Texas the fifth circuit reversed three lower court decisions that had found Mexican American segregation to be de facto,*** and, in Tasby (197) bilingual education was ordered as part of a larger desegregation plan. Puerto Rican and other Hispanic students in New York City sued

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* MALDEF is an acronym for the Mexican American Legal Defense Fund, a non-profit organization founded in 1969 by the Ford Foundation for the purpose of defending the legal rights of Mexican Americans and supporting litigation activities to increase the participation of Chicanos in American society.

** Roos, p. 35.

*** Arvizu v. Waco Independent School District, 496 F. 2d 1309 (5th CCA, 8 July 1974).

the Board of Education charging that the board's dedication to the bilingual approach had been largely verbal rather than actual. Aspira took the case in 1972, and the plaintiffs and defendants signed a consent decree on a bilingual/bicultural plan which the court approved in August 1974.

Throughout the 1970s, the trend toward bilingual/bicultural and other "within-school" compliance techniques continued. Bilingual/bicultural increased to the extent that it was criticized for displacing desegregation. Lloyd Henderson, director of OCR's Elementary and Secondary Education Division said in an interview with Orfield that OCR's time was being consumed by bilingual cases and that "We've just ignored segregation."* However, in 1975, the swing toward bilingual/bicultural and away from desegregation was arrested. When the Denver desegregation case was remanded by the Supreme Court back to the lower court to fashion a remedy, the district court approved an extensive desegregation plan that included provision for the continuation of experimental bilingual/bicultural programs in four predominantly Chicano schools—schools which, because of these programs, would be excluded from the overall desegregation strategy. The court of appeals ruled that the lower court had overstepped its bounds in approving such a plan and, since the Supreme Court had already decided not to hear the case again, the decision of the tenth circuit court would stand. The court stated: "Although bilingual instruction may be required to prevent the isolation of minority students in a predominantly Anglo school system . . . such instruction must be subordinate to a plan of school desegregation."* In addition, the court rejected the plaintiff's assumption that "minority students

* Orfield, p. 310.

are entitled under the fourteenth Amendment to an educational experience tailored to their unique cultural and developmental needs," and quipped, "Although enlightened educational theory may well demand as much, the Constitution does not."

Similar action was taken in another Colorado case, Otero v. Mesa County Valley School District [No. 51, Civ. Act. No. 74-W-279 (D. Colo. Dec. 31, 1975); 408 F. Supp. 162 (D. Colo. 1975)]. Chicano plaintiffs requested bilingual/bicultural instruction, but the district court denied the request and held that socioeconomic class, rather than a language deficiency, was responsible for the poor academic achievement of Chicano students. The court reinforced the Keyes doctrine that the Constitution did not require "an education experience tailored to their unique cultural and development needs."

By 1976, pressure from civil rights groups to force OCR to enforce the Civil Rights Act was growing. A lawsuit was brought against OCR for not enforcing the Civil Rights Act. In July of 1976 Judge Sirica issued a court order reprimanding OCR for "systematically failing to enforce civil rights law in northern and western cities."* Similarly DHEW was found guilty of intentional non-enforcement of the Act in Northern cities where Federal funding to segregated schools continued, in violation of Title VI.**

There is evidence suggesting that the traditional role of bilingual/bicultural as a means by which desegregation can be circumvented was still a major impetus for program development and implementation. In El Paso, for example, the school district had no intention of assimilating its students

* Orfield, p. 316.
** Brown v. Weinberger, 417 F. Supp 1215 (D.D.C. 1976).

but rather pressed for adoption of a bilingual education program.*

There were program abuses reminiscent of the segregation of Mexican American students even when there was no apparent language deficiency. Bilingual/bicultural programs were often used as a means for reinforcing segregation. Programs were designed to meet minimum Federal requirements rather than being aimed at ameliorating the problem. This was the complaint brought in Ríos v. Read [75 Civ. Act. No. 296 (E.D.N.Y., Jan. 14, 1977)]. The defendant school board argued that their language deficiency programs complied with Title VI and the fourteenth Amendment and were, therefore, adequate. The court found otherwise, and ruled that ineffective programs were the same as no program at all and, therefore, were in violation of Lau.** The court said:

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* Orfield discussed the El Paso plan and quotes from that school district's "Education Philosophy," emphasizing "the need to begin instruction in the language native to the child and to help him develop maximum facility in the other dominant language of our bilingual city as early as possible, while continuing the development of his native language" (p. 304). . . . Blandina Cardenas' criticism of that approach is applicable to many similar plans: "They were willing to do anything so long as they did not have to desegregate" (p. 303).

** This lead was followed a short time later in the Cintrón v. Brentwood Union Free School District [No. 77-C-1310 (E.D.N.Y. 1977)], in which the court cited Ríos in ruling that "effective programs must be provided." In a later ruling in the same case (October 10, 1978, at 18-19) the court warned against using language deficiency as a means for segregating Hispanic children and said that "contact between non-English and English speaking children in all but subject matter instruction," must be ensured while the bilingual/bicultural program is maintained. The Cintrón ruling was also significant with respect to the staffing requirements of bilingual/bicultural programs. Because of State tenure laws, those teachers hired to teach in bilingual/bicultural education programs were the first to go when layoffs were required. Puerto Rican and other Hispanic parents sued the State, charging that this action violated Federal laws guaranteed in the right to bilingual education. The court ruled that "where compliance with both Federal and State regulations is an impossibility, the State enactments must give way," and thus showed strong support for the bilingual/bicultural program.

> It is not enough simply to provide a program for language disadvantaged children or even to staff the program with bilingual teachers; rather, the critical question is whether the program is designed to assure as much as is reasonably possible for the language deficient child's growth in the English language.

Hispanic intervenors were successful in the Boston desegregation case, Morgan v. Hennigan [Phase I: 379 F. Supp. 410 (D. Mass 1974), aff'd sub, nom; Morgan v. Kerrigan, 509 F. 2d 580 (1st Cir. 1970); Phase II: 338 Supp. 581 (D.C. Mass., 1975), 401 (1st Cir. 1976), cert denied 96 S. Ct. 2648 (1976)]. The intervenors were successful in convincing the court that bilingual programs were necessary to serve the needs of Hispanic and other national origin minority students in the desegregation process. The court stipulated that bilingual programs be included in the overall desegregation plan for the city. In addition, language deficient children would be assigned to a class first. This was done to avoid dispersing students to such an extent that there would not be enough numbers in a given school to allow for language training.

Shortly after the Boston case was decided, Hispanos were again successful in intervening, this time in Wilmington, Delaware. In Evans v. Buchanan [416 F. Supp 328, 359 (D. Del. 1976)], the court ordered that existing bilingual programs must be left intact and also advised education officials to comply with Federal regulations concerning national origin minorities. Non and limited English proficiency students would also be given school assignment priority.

At approximately the same time as the Delaware case was being argued, a motion to intervene on behalf of Hispanic children in Milwaukee, Armstrong v. O'Connell (1976) and Amos v. Board of School Director of the City of Milwaukee (1976) was denied:

> Hispanic education issues were not seen as a major problem for the decision-makers as they faced a court which was deciding a black/white case even though the implementation of any court ruling on Milwaukee would clearly have an impact on Hispanic children.*

The plan which was implemented simply considered Hispanics as "non-blacks" and offered no protection to them.

Conclusion

Public acts of discrimination against and segregation of Hispanos in public school systems have never been officially acknowledged and the need to remedy their segregation has never been given serious attention. The racial identity and guaranteed constitutional rights of Hispanos is still largely unresolved. Today, as in the years prior to the 1970s, the question which remains central to Hispanos is: "Is it Brown—black and white; or 'brown,' 'black,' and 'white'"?

Twenty-five years after Brown, the desegregation of this nation's public schools has not yet been accomplished, and Hispanic public school students are becoming increasingly isolated. Administrative, legislative, and judicial issues are largely unresolved.

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* Baez, Fernández, and Guskin, 1979, p. 27-28.

PART III: EFFECTS OF SCHOOL DESEGREGATION ON STUDENTS, SCHOOLS, AND COMMUNITY

CHAPTER 4

EDUCATIONAL OUTCOMES

> The direct fallout effects of Brown tend to foster black militancy and an impatient insistence on equal treatment. . . . The direct consequence of Brown . . . has been merely to shift the basis for racial segregation from open enforcement to covert activity (Robert Carter, The Black Law Journal, 1971, pp. 197-198).

Introduction

The effects of desegregation have too often been viewed in terms of the harm-benefit perspective. Whether the benefits derived from school desegregation justify the effort should not be at issue; nor should it be assessed from that vantage point.

Our review of the research literature proved enlightening but disappointing. While it soon became obvious that desegregation was not causing harm and in many cases was beneficial to everyone involved, it was disappointing to observe the politicization of the research process. In addition, the state of school desegregation research still left much to be desired vis-a-vis non-black minority groups. Also, most studies of school desegregation limit themselves to the school district as a whole, while evidence suggests that research must also focus on the schools and classrooms. Furthermore school desegregation is seldom evaluated beyond the transitional year. In brief, much of the past research on school desegregation has been achievement oriented and rather limited to traditional issues and methods of approach.

Research in this area is slowly beginning to raise further questions about the impact of desegregated schools on community integration, interracial attitudes, career orientation, and later occupational advancement, as well as examine the impact these pre-existing conditions may have on school desegregation.

In 1952 a group of social scientists headed by Dr. Kenneth Clark produced a brief in support of Brown. As it turned out, Brown needed little help from social science evidence. The Brown decision did not include findings about academic achievement, nor a promise of better test scores. Since that time, more sophisticated measures have been introduced to further document those basic propositions so inherently obvious. After cursory comparison between the 1952 brief to one recently filed by another illustrous group of social scientists in the Columbus (1979) case, surprisingly little illumination from social science seems evident after 27 years. Although literature has abounded during this period, it has not changed the state of the art. In fact, some would argue that for the most part, "the improvement of research on social policy does not lead to greater clarity about what to think or what to do. Instead, it usually tends to produce a greater sense of complexity."** For instance, Coleman's report of 1966 produced rebuttals questoning his analytical framework, before its release:

> Coleman was a sociologist and used the regression statistic dearest to that discipline. Bowles and Levin were economists and they held out for another regression statistic (the unstandardized beta coefficient). Reading the Report analysis was hard enough, but umpiring debates over the correct regression statistic taxed the brains of even rather sophisticated researchers. . . . Later in the decade, reanalysis of the Coleman Report became a growth industry.**

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* David Cohen and Janet Weiss, quoted in Education, Social Science, and the Judicial Process, 1977, p. 73.

** Ray C. Rist and Ronald J. Anson, 1977, p. 9.

It is reasonable, therefore, to conclude that a better use of social science in future school litigation should not be based on the benefits of desegregation, but on how to facilitate and improve desegregated education. The above discussion notwithstanding, let us briefly digress into a benefits analysis.

Achievement

If we, but for a moment, believe that in order for a black or Hispanic child to learn he or she has to sit next to a white child, that is patently racist. If, on the other hand, we consider the social dynamics which severely limit the adequate provision of quality education to a ghettoized school, then a myriad of forces must be examined, most of which impinge on the effective delivery of educational services, and few of which are based on the child's inherent capability. If a socio-economic, racial mix tends to maximize educational development, then whatever legal means achieves that development is on the threshold of equalizing educational opportunities. Although research tends to bear this out, the racial mix should nevertheless be legally supported independent of maximum educational development.

In general, whites are substantially less affected by the particular school they attend than minorities. Research shows that "there are no apparent educational gains when poor white and black or latino children are placed together."** In fact, the greatest gains are observed in schools where minority children are integrated with white middle class children. Some researchers have qualified this statement by asserting that critical ratios must be maintained; accordingly, racial mixing seems to produce the highest gains when whites are the majority and remain in "their" schools and classrooms.**

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* Orfield, p. 144.
** Edmund Gordon and Nancy St. John, 1978.

In 1978 Edmund Gordon and Nancy St. John reviewed more than 120 studies of the relationship of school racial composition to the achievement, attitude, and behavior of children. They conclude: "On the basis of this evidence biracial schooling must be judged neither a demonstrated success nor a demonstrated failure."* Rita Mahard and Robert Crain (1977) reviewed 73 studies on the effects of desegregation on black achievement. They conclude that desegregation is "noticeably more likely to have a positive impact on black test scores if it begins in the earliest grades."** The Commission on Civil Rights found that the performance of white students in desegregated classes was no different from the performance of similar white students in all-white classes.*** As we survey the literature, hundreds of articles have explored this area in varying degrees of detail. Clearly, more emphasis has been given this area than any in the literature. And clearly, the results are not altogether different from what we have already summarzed.

Ability Grouping

Closely related to achievement, is the widespread practice of ability grouping and student tracking. Thus far, ability grouping has not proven very beneficial. In too many cases it becomes exceedingly difficult to determine whether such grouping is established on the basis of ethnicity or for reasons of ability. According to the landmark case, Hobsen (1967), grouping can be, at best, ineffective; at worst, harmful. The court found that the track system, as practiced in Washington, D.C., deprived poor people and blacks of the rights guaranteed and was, by its very nature, discriminatory.

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* Gordon and St. John, p. 9.
** Robert L. Crain and Rita E. Mahard, 1977, p. 1.
*** U.S. Commission on Civil Rights, Racial Isolation in Public Schools, 1967.

After extended hearings Judge J. Skelly Wright stated in his closing remarks:

> Even in concept, the track is undemocratic and discriminatory. Its creator admits it is designed to prepare some children for white collar and other children for blue collar jobs. Considering the tests used to determine which children should receive the blue collar special, and which the white, the danger of children completing their education wearing the wrong collar is far too great for this democracy to tolerate (at 515).

Placement through testing has also been in great debate. In most States the proportional number of minority youngsters in EMR (educationally mentally retarded) and SLD (slow learning disabled) classes outnumber whites by over 2 to 1.* California has gone so far as to ban testing (e.g. Intelligence Testing)** which can easily discriminate on linguistic or cultural grounds.

The Mexican American Study (1969-74) differentiated between ability grouping and tracking, though respondents (e.g., principals) found it difficult to separate the two. Mexican Americans were more likely to be found in low ability tracks in schools with more Anglos. These groups become stable in junior high school and continue into senior high school where it is almost impossible to move out of a curricular track.***

According to the U.S. Commission on Civil Rights (1976), the most common cause of classroom segregation is the educational practice of ability grouping. The Commission found that segregation also occurs in special education classes, such as those for children with behavioral problems, learning disabilities or classes for the mentally retarded in which minority students are also over-represented.**** Our analyses of the OCR data (Volume III) indicates a continuation of this practice for both black and Hispanic children. For Hispanos,

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* See chapter on School Practices, Volume III of these reports.

** I.Q. testing for tracking purposes was declared invalid in California, in part, because Chicanos did not have the facility to understand the English required.

*** Thomas P. Carter and Roberto D. Segura, 1979.

**** U.S. Commission on Civil Rights, Fulfilling the Letter and Spirit of the Law, 1976.

this is not always most likely to occur only in highly segregated districts.

Dropouts and Suspensions

The problem of dropouts and poor academic performance are related. Special reading and math programs have been created to combat this problem. However, reading programs are not needed merely because Hispanos and blacks are now going to school with whites. If brown, black or white children have reading deficiencies, they need a reading program. Not surprisingly, desegregation has brought these problems to the fore because they had been previously ignored in isolated schools. As these problems continue to exist, the desegregation process may provide new tools and approaches for working with the problem.

In a report on children out of school (1974) and school suspensions (1975), the Children's Defense Fund found that school discipline practices became harsh in schools where blacks and Hispanos were numerically small. The rate of dropouts also increased in these schools. A statistical analysis of the OCR elementary and secondary school data (Volume III) produced a similar pattern for blacks. Among Hispanos, while suspensions were considerably lower, other school practices (e.g., ability grouping) were more prevalent and enrollment in special classes (e.g., EMR, SLD) were higher. In schools where major bilingual education programs were offered, however, both dropout and suspension rates were low.

The U.S. Commission on Civil Rights* also reports that a higher proportion of minority youngsters in desegregated schools are subject to discipli-

* U.S. Commission on Civil Rights, 1976.

nary measures, primarily suspensions and expulsions, than white students. The disproportion is most evident in the statistics on student suspensions. Our survey findings (Volume III) indicate the same for black students.

Quality Education

Although quality education and desegregation are not synonymous, it is still true that a prerequisite for the achievement of the former can rest on the latter.* Although well maintained school plants, per se, do not guarantee high quality education, it is difficult to believe that size of class, length of teacher service, and qualifications of teachers do not influence the quality of education. Schools with many Hispanos have a disproportionate percentage of poorly prepared teachers and predominantly Chicano and Puerto Rican classes are larger than Anglo classes.** Hence, the quality of programs are oftentimes inferior.

Teachers' views of Hispanos are rather pessimistic. The belief in the cultural deficiency of Hispanic students is quite prevalent. As Carter and Segura state: "Teachers are not unlike other citizens; they see the schools' role to be one of encouraging the poor and the foreign to become full-fledge productive Americans. . . . While they may generally want to help Hispanic school children, they do not necessarily like or accept them as they are."***

Formulas and programs designed to equalize the distribution of educational services among localities have not been very successful. The fact is that in no case has one of these equalization formulas actually equalized educational opportunities. States' efforts to eliminate differences in expenditures among districts simply does not work. Equalization formulas do not equalize educational opportunity.****

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* Ronald Brown, The Black Law Journal, 1971.
** Carter and Segura, 1979.
*** Ibid., p. 203.
**** Ibid., p. 227.

The U.S. Commission on Civil Rights has extensively documented that one of the most tangible and obvious effects of desegregation on the quality of education is the general upgrading of school buildings, facilities, and provision of adequate supplies.*

Curriculum

Compensatory education is too often rooted on the assumption that the school should remodel (or re-mold) the culturally different.** There is the need to be equally concerned not only with the environment in which a child learns, but also with the context of the learing experience. It is difficult to see the benefits of sending an Hispanic child to a bilingual classroom if we are merely trading Shakespeare for Cervantes. As they were frustrated with the old, they will likewise be with the new. Similarly, black educators are hard put to defend integrated schools if texts are simply of the "Little Black Sambo" type.

Even in schools which profess a modicum of bilingual/bicultural education, subtle cultural exclusion persists. Some authors stress that "the culture taught does not reflect the real and viable barrio lifestyle." For instance, although Spanish may be accepted in the school, the vernacular of the barrio is discouraged. In this and other respects a "fantasy heritage" is created, while curricular rigidity continues. "Few schools modify their curriculums to include elements relative to the lives, expectations, experiences, or values of Chicano children."***

As Ray Rist reports in School Desegregation, Shadow and Substance, very little curriculum extends beyond folklore:

> The belief I have seen operant in majority-white schools that a bit of remedial tutoring and perhaps a few pictures of Black people on the classroom walls will be sufficient to overcome both the unequal academic skills many

* U.S. Commission on Civil Rights, 1976.
** Carter and Segura, p. 182.
*** Ibid., p. 181.

> Black children bring to the school and the subsequent unequal status that lack of skill affords them is naive at best (sic) and malicious at worst (p. 116).

Staff Allocation

Our case studies indicate that Hispanic staff are also segregated in the school system. This is viewed with mixed reaction. On the more positive side, Hispanic staff is more likely to be available to serve the needs of Hispanic students. However, it is indicative that the school system may also be segregating minority staff as effectively as its minority students. In addition, it is still a common practice, although seldom documented, that predominately minority schools serve as training institutions for beginning Anglo teachers. Those who do well are subsequently moved to higher status schools.*

An analysis of 29 case studies reviewed by the U.S. Commission on Civil Rights (1976) reveals that in 16 of these school districts, minority employment increased following school desegregation.** The advantage of minority student dispersal throughout a school system is that every teacher is in contact with minority children. Therefore, the skills once required of only a few teachers are now essential to most of a district's staff. This places an increased responsibility on the school district to assure that teachers are adequately prepared to meet the linguistic and cultural needs of minority students.

Racism on the part of teachers is hard to document. The U.S. Commission on Civil Rights (1971) conducted a comprehensive study of Southwestern schools and undertook to describe teacher-student verbal interactions in 429 classrooms across 52 schools.* Up to that time, differential treatment of

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* Carter and Segura, 1979.
** U.S. Commission on Civil Rights, 1976.

minority youngsters had been difficult to substantiate. The Commission's findings clearly indicate that Chicano students were not receiving the benefits of public education to the same extent as Anglo students. Geneva Gay* studied Southwestern blacks using a similar methodology. Her findings were parallel to those of the Commission. In her summary she states "Chicano pupils consistently are encouraged less and discouraged more than their Anglo counterparts." Elsewhere she states: "Mexican American pupils in the survey area receive considerably less of some of the most educationally beneficial forms of teacher behavior than do Anglos in the same classrooms" Anglo teachers are failing in the education of Hispanic children.

As bilingual teachers are dispersed, the difficulty for Hispanic youngsters is "Who provides bilingual instruction?" Often the more senior teachers are also those best likely to have the necessary skills to teach bilingual education. With declining enrollments, younger and less senior teachers are replaced. In the Brentwood School District, Cintron (1978) affirmed the rights of younger, bilingual education teachers. The district complied with a separate tenure system for bilingual program staff. In the State of California the conflict is avoided with a tenure law which requires the retention of senior teachers when they are "competent to render" the services needed. Accordingly, the "ability to teach in a bilingual education program is a competency which will permit a school district (that has adopted such a program) to retain junior employees."** In most school districts, however, the problem continues.

Bilingual Services

If all children in need of bilingual education were dispersed, it would

* Geneva Gay, 1975.
** Roos, p. 23.

be unlikely that there would be sufficient numbers of children in most schools to justify separate classes for bilingual instruction. It is for this reason that the interests of bilingual education must be compatible with desegregation. This can be accomplished through careful design, not by fiat.

Bilingual education becomes a form of segregation only when it is exclusive to non-English speakers. (Even then, it constitutes a bona fide group and is not discriminatory in intent.) Dispersing students enrolled in bilingual/bicultural programs without provision of similar services in desegregated schools is not only educationally unsound, but totally disregards students' rights to equal educational opportunity. Dismantling bilingual education programs for the purpose of desegregation is to effectively condemn national origin minorities to a substandard way of life.*

Segregation Effects on Student Attitude and Life Opportunities

Evidence has mounted to suggest that racial attitude improves in desegregated settings. For instance, one longitudinal study reports that, "although only 8 percent of the white sample wanted to desegregate, a year after dual schools were eliminated 27 percent of the whites believed desegregation was beneficial, although only 3 percent saw it as improving the quality of education."**

The more years of desegregation in a school system, the more positive is the overall academic achievement and the more positive the racial attitudes. A NORC study (1970) found that "desegregated white students were more likely to have had a close black friend, to have had black friends visit their

* Christopher Reeber, 1972.
** Florence H. Levinsohn and Benjamin D. Wright, 1976, p. 126.

homes, and to be living in multiracial neighborhoods. . . . This is also true of blacks."** More recent polls further confirm this finding.**

Case studies of school desegregation indicate that although racial school hostility flares up the first year, it seems to subside considerably by the second year. Often, students demonstrate anger against the schools through hostility against other students. Although ethnic conflict initially increases when racial boundaries shift, in time they subside as boundaries become more fluid.

Too few students of any one group can promote stereotyping and isolation, but research conflicts about optional ratios between different racial or national origin groups. Although racial balance, alone, is a restricted notion for guaranteeing desired results, peer groups can be very powerful influences. Henderson says that for effective community participation and healthy interpersonal relations, researchers suggest that "no group should ordinarily be smaller than twenty or thirty percent of the school."***

In the long run, school desegregation improves student racial attitudes. Student testimony received by the U.S. Commission on Civil Rights indicated that: "Although initially school desegregation had been a frightening or difficult adjustment because of preconceived notions or prejudices, it subsequently proved to be a worthwhile experience and essential preparation for life."****

Evidence exists that blacks who were educated with whites obtain better jobs as adults. Crain and McPartland (1978) explain this finding by noting that many job oportunities are obtained from one's friends. While improving career advancement through an extension of the normal friend network,

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* Green, "Northern School Desegregation," in Uses of the Sociology of Education by Edmund Gordon (ed.), 1974, p. 251.
** Gallup Opinion Index, 1978.
*** Ronald D. Henderson and Mary von Euler, 1979, p.1.
**** U.S. Commission on Civil Rights, 1976, p. 138.

school desegregation is also a preparation for functioning in a desegregated society. Evidence is accumulating to indicate that blacks and whites who attend desegregated schools are more likely to prefer biracial environments as adults.*

Student support for desegregation and busing continues to be greater than their parents.** Superintendents queried in a national survey conducted by the Commission on Civil Rights "said that a majority of students, both white and minority, supported desegregation in their districts."*** Although the implementation of school desegregation in public school systems involves much administrative and social change, student support is much more favorable than usually reported. Studies on student attitude and behavior strongly suggest that "school desegregation . . . may result in increased interracial affiliation."****

Schooling Outcomes

Although desegregation must be achieved in our pluralistic society, it is not a panacea. Societal patterns of race relations cannot be solely altered in the schools when profound inequalities of income, occupational status, educational background, and social status prevail in the society-at-large. Children see their place in school as they perceive it away from schools, and they exert their place in society as they practice it in the school.

School desegregation can place some pupils in a minority group situation and impose marginality onto cultural groups. It can also allow self-evaluation against academic standards that can discourage motivation. Yet, research findings generally indicate that school desegregation has been effec-

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* Levinsohn and Wright, p. 128.
** U.S. Commission on Civil Rights, 1976.
*** Ibid., p. 136.
**** Michigan State University, 1976, p. 23.

tive in breaking many castelike structures. Implementation has been successful when students have been adequately placed in the proper supporting environment, and it has also been most successful with young children. Nevertheless, research on school desegregation continues to be concerned with the "short term effects" on achievement and student effect.* While research is now focusing on the long-term effects of school desegregation (e.g., postsecondary education and employment), limited information is available. Additionally, research has not systematically assessed the effectiveness of remedies and so we still know very little about implementation processes and their effects.**

While it is not the intent of this chapter to discuss at length the educational outcomes of school desegregation, it is important to indicate the processes which take place and the contexts within which they are carried out.

Community Context and Response

Prior to 1954, seventeen states and the District of Columbia had laws requiring segregated schools. This condition did not change much until the Civil Rights Act of 1964 was passed. Even then, it has only been since 1968 that substantial reduction or racial segregation has taken place.

By the middle 1950s, segregation was beginning to increase in the North, after major entrenchment in the South and Southwest. Scant attention to the North was paid until the 1960s. And little was done until the end of the decade, after efforts at desegregation subsided in the South. By 1970, blacks and Hispanos shared the poorest housing and the oldest schools in both the North and South. Ironically, while the Brown decision in 1954

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* Weinberg, 1977.
** Rist, 1979.

outlawed segregation in schools, subsequent decades experienced a rapid growth of minority populations outside the South, and a concomitant development of residential and school segregation throughout the nation.*

When comprehensive statistics became available in 1968, through the DHEW, Office for Civil Rights annual (later biennial) survey of elementary and secondary schools, 50 percent of all black children were enrolled in the 100 largest school districts. Between 1968 and 1976, although overall enrollment dropped, black enrollment rose, thus increasing racial isolation.

Similar patterns occurred in predominantly Hispanic districts. Between 1968 and 1976, in 49 large Hispanic districts, overall Hispanic enrollment increased while total enrollment decreased. The racial isolation index for Hispanos (H,NH,50%) has also risen steadily.**

As minority percentage continues to increase in major school districts, the issues of school desegregation, although educational in scope, continue to remain political in nature. School policies continue to be determined in the political arena. Plans are devised with minimal community input. "Racial segregation has historically been a phenomenon of power and therefore desegregation cases must necessarily be concerned with it."*** The most important factor influencing the quality of school desegregation is the nature of the leadership provided by the local school board and superintendent. Other factors also play an important role in the decison-making process, though the extent to which this occurs is dependent on the strenth and political support both the superintendent and the respective school board can muster. White support or opposition to desegregation is a direct function of leadership behavior and attitudes.**** In Dallas, for instance, leadership

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* For Hispanos, see: Baez, Fernandez, and Guskin, 1979; Cardenas, 1977; Roos, 1977; Teitelbaum and Hiller, 1978; Castellanos, 1977; Ochoa, 1977; Carter and Segura, 1979; Milan, 1977; Handlin, 1966.

** For an extensive display of these figures and indices consult Volume III of these reports.

*** Brown, p. 222.

**** David J. Kirby, et al., 1973.

came from the business community; in Milwaukee and Bridgeport it came from the superintendent; in Omaha from a board group of concerned citizens; and in Stockton from a liaison of liberal whites and minority self-help organizations.

While public officials actively "support" the desegregation of schools, the community generally directs its attention toward making the process work.* What is more, legal enforcement, as part of Federal or local government, often reflects the position of local officials, as our case studies also indicate. In addition, various national surveys of both students and superintendents indicate that, for the most part, the majority, white and black, support desegregation in their districts.** "There has been an increasing trend toward white acceptance of equality for blacks, including greater acceptance of residential integration."*** The brief, in quoting from The Gallup Opinion Index, states that among northern white parents polled in 1970 and 1975, 67 percent reported they would not object to sending their children to schools where half of the students were black compared to 37 percent in 1963.

Desegregation has been implemented without major disruption in most school districts, nationwide. Where, then, lay the problems so often referred in the literature? Apprehensions of the populations affected by the change have been promulgated by special interest groups, sometimes through fear of reprisal from members of one group toward another or through the promulgation of so-called benefits achieved only through segregated schools. These are employed to obstruct community support. In many districts, affirma-

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* U.S. Commission on Civil Rights, 1976, p. 95.
** Ibid.
*** Social Science Statement, brief filed in Columbus case, 1979.

tive action by responsible businessmen, religious groups, and civic organizations has greatly contributed to community acceptance of school desegregation. At times, information and rumor control centers have been effective in providing the accurate and easily accessible information about the process of desegregation. Media coverage of school desegregation has had enormous impact upon local and national opinions, but in many instances it has been negative or overly dramatized. Also, when key levels fail to exert strong leadership in the implementation of desegregation plans, the likelihood of disruptions dramatically increase.*

Many times, poor implementation of plans disrupts the process of desegregation. School-community relations plans cannot be overemphasized. This reduces widespread uncertainty many times prevalent throughout a community before any major social change can be effected. Uncertainty, in these cases, breed anxiety and conflicting expectations. "Clear and explicit policies given wide circulation are absolutely essential to achieving desegregation with minimum conflict and disruption."** Henderson and von Euler say that "broad citizen and parental participation is necessary before a plan is "broad citizen and parental participation is necessary before a plan is promulgated."*** Biffle is emphatic in saying "the only way that a program can be successfully implemented is with strong community participation."**** Community organizations and strong principals with particular leadership characteristics play positive roles in making desegregation work.

It has been too often assumed that low-income minority parents are anxious to cooperate in any way with "any" program of this nature, whereas white middle class parents resist such proposals.***** As a result, white middle class parents have been traditionally included in the planning process, but

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* Al Smith, et al., 1973.
** Ibid., p. 25.
*** Henderson and von Euler, 1979.
**** Richard L. Biffle, 1978, p. 25, emphasis added.
***** Diana H. Kirk and Susan Goon, 1975.

low income parents have not.* Unfortunately, community participation has received much rhetoric but limited actual involvement, and still less among minority parents.

Hispanic resistance to desegregation has more to do with particular desegregation remedies than with the concept of school desegregation, per se. In general, many desegregation plans have jeopardized special programs for Hispanos, remedies have usually not been preceded by an adequate program to prepare the schools for change, busing has too often fallen on minority shoulders, and in many cases assignment plans have dispersed students without adequately providing transportation for participants for extracurricular activities, parental activities, or in responding to emergency situations.

White Flight and Busing

The issues surrounding white flight and busing continue in controversy. White flight, although minimal, primarily occurs the first year of desegregation. As one author succinctly summarized: "As long as it is possible to find such a mass of contradiction on so volative an issue, public debate will flourish."** Researchers greatly disagree on the amount of white flight attributable to desegregation, precise measures of white flight, and the extent to which it may be related to desegregation.***

Reynolds Farley (1975b) failed to uncover the white flight relationship espoused by Coleman. In using the same data, he found no difference in rate of flight in cities whose schools were integrated between 1967 and 1972 as compared to schools which remained segregated. Christine Rossell (1975; 1977) further challenged Coleman's thesis by observing that in 58 of the 60 cities studied, court ordered desegregation was not followed by a significant

* Kenneth Clark, 1965; Thomas F. Pettigrew, 1975b.
** Michigan State University, p. 23.
*** Thomas F. Pettigrew and Robert L. Green, 1976.

decline in white enrollment. Pettigrew and Green (1976b), in reanalyzing Coleman's data, found a correlation of -.30 between school desegregation and white flight. A secondary finding was that Coleman's results were largely obtained from the contributions of 2 cities added to his sample "for reasons he did not make clear." Smith, et al. (1973) also did not encounter immediate or long-run decline in the number of either white or black students attending the system after desegregation as compared to beforehand.

The evidence is fairly consistent in indicating white flight is a much misused term, usually indicating patterns already independent of school desegregation. Farley (1975a) found that on the basis of data collected from the 1970 census, economic factors can no longer account for the disproportionate concentration of blacks in the inner city. Liberally defined, white flight during school desegregation seldom exceeds several percentage points beyond the normal outflow of whites to suburbia.

In examining white flight several points are generally agreed upon: 1) metropolitan plans are least prone to white flight, 2) piecemeal or phased-in plans (e.g., Boston) are likely to continue white flight at each major phase of implementation and, 3) to concentrate desegregation on borders of ghettos or in fringe areas that are in racial transition also accelerates white flight.* Although it is also argued that whites are less likely to flee predominantly Hispanic schools than precominantly black schools,** our analyses indicates this is not always the case (see Volume III).

Busing for racial balance is probably more misunderstood than any other issue in school desegregation. Shuttling students has been supported by transportation laws long before automotive vehicles existed. Massachusetts

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* Henderson and von Euler, 1979.
** Reynolds Farley, 1978; Orfield, 1978.

enacted the first pupil transportation law soon after the Civil War, as early as 1869. In this century, it doubled, during the 1930s, grew again by nearly 70 percent in the 1940s, and increased by more than a third in the 1950s.* These rates declined slightly in the 1960s. Contrary to popular opinion, busing has never been primarily for school desegregation. According to House subcommittee hearings only about 3.5 percent of the nation's busing was for the purpose of school desegregation.** Yet busing was prevalent across the country.

In the 1973-74 school year, "52 percent of all public school students rode buses . . . [and] more than 600,000 children were bused to private schools at public expense."*** In 1976, the National Institute of Education approximated that integration might account for one bus in eight.**** Yet, the five years after court-ordered busing began in 1971 did not increase the nation's school bus fleet from the previous five years.*****

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* Orfield, 1978.
** Elliot Richardson, Hearings before the House, 1972.
*** W. Vance Grant in Orfield, p. 128.
**** NIE, 1976.
***** William Coleman, Jr., 1976.

Gary Orfield systematically erodes our misperceptions about busing:

> The most heavily populated district now carrying out a desegregated plan that requires substantial busing is Dade County . . . where a partial plan costs less than one percent of local expenditures. The largest system to have a plan distributing students proportionally in all schools is Prince George's County, Maryland . . . where the added cost of the 1973 plan was 0.6 percent of the local school budget.*

He quotes from a U.S. Commission on Civil Rights publication, School Desegregation in Ten Communities, that the largest school district in the country (in physical size) to undergo desegregation is in Nevada and covers 8000 square miles. It includes more than 72,000 students spread out over an area as big as Connecticut, Rhode Island, and Delaware. Yet "the average distance and time of ride for students was 11 miles and 30 minutes" (p. 132). The additional cost to the district for the first year, including a one-time expense of busing 30 new buses, came to about "2.3 percent of the local schol budget" (p. 132). In Denver the additional transportation costs due to court-ordered busing (Keyes) was about "1.6 percent of the system's budget" (p. 133).

Hispanic attitude toward busing lies between that of blacks and whites. This was true in both our case study sites as it was in a recent survey of Chicano parent attitudes in Los Angeles. The survey documented that 44 percent of Mexican Americans, 69 percent of blacks, and 12 percent of whites favored busing.**

These findings lend little support for desegregation plans to be so dominated by the tension of interracial busing. Remedies primarily dictated by formulas for the least amount of transportation will too easily overlook

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* Orfield, p. 132.

** L.A.U.S.D., 1977. (This is the largest school district survey of Hispanic parent attitudes toward busing.)

the reality of the desegregation process. Furthermore, supporting evidence is lacking. As numerous DHEW audit reviews will attest, the desire to segregate has been so strong in some school districts that local authorities have insisted on busing. In El Paso, for instance, the feelings were so strong in the early 1970s that local officials insisted on busing for segragation even when state funds were unavailable.

Major opposition to busing is steeped in the belief that it destroys the right to a neighborhood school and thus denies freedom of choice.* However, fewer than half of all children in elementary school and less than one-fourth of the older students attend schools within a mile from home.** It is noteworthy to emphasize that the "benefits claimed by proponents of the neighborhood school are desirable, but only as adjuncts to a learning system, not as indispensable preconditions to it."***

Focusing on the "harm-benefit" argument, busing has also not been found to be strongly related to poor achievement of white students. Various researchers, such as David Armor (1978), have not found declines in white achievement as a result of busing.

Community Setting

As Gary Orfield states, "School segregation is bad and getting worse in the largest cities in the North. In the South, on the other hand, and in the northern states with few black and Latino students, major progress has been made."**** Regionally, the Northeast is having the most severe problems because the old cities are those which have the fewest whites and the greater degree of residential isolation.

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* Brown, 1973.
** Orfield, 1978.
*** Ibid., p. 223.
**** Ibid., p. 76.

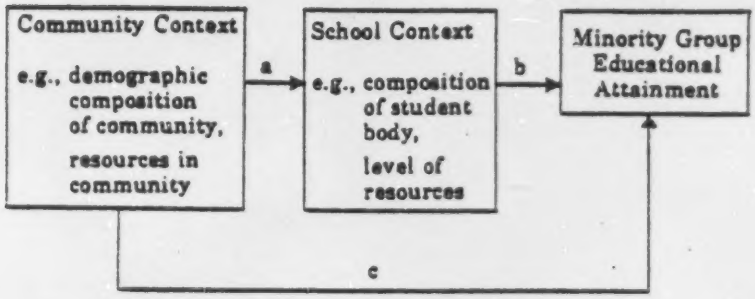
studies attempted to enhance minority achievement and adopt policies of enculturation which changed or modified the child's cultural orientation.

The authors hypothesize that both community context and school context have independent (and combined) effects on minority educational attainment as the following figure illustrates:

Figure I

The Community Context and Minority Educational Attainment:

A Model for Aggregate Analysis



Schumaker, Paul D. and Getter, Russell W. Journal of Education, 1977. p. 10.

Adapting this model to school desegregation, we would have to posit that communities with an Hispanic population of 6 or 8 percent face quite a different set of issues from those where the Hispanic population exceeds fifty percent. Yet all may have something in common--residential segregation. In which case, the extent of Hispanic community segregation is the same regardless of size but, predictably, community-wide influence in the schools, and ultimately on educational attainment, will be dissimilar.

Among Hispanos, Puerto Ricans in the Northeast are more segregated than Mexican Americans in the Southwest. This is partly attributable to the greater minority concentrations due to the tri-ethnic conditions of the Northeast as compared to much of the Southwest, as well as to the larger population of northeastern cities. Additionally, the large cities are in severe economic decline. Other demographic characteristics (e.g., occupational and educational level and socio-economic status) remain similar for both groups and are considerably below national averages.

The differences between occupational level, income, education, and linguistic barriers between whites and Hispanos lead to differences in the way parents perceive schools and value education, as do their aspirations for their children's future.* In this respect, Shumaker and Getter (1977) posit that the community context may be as important as the school context in examining Hispanic group educational attainment. Community context refers to a "variety of demographic, economic, and cultural characteristics of the broader political community within which schools must operate".** After researching 34 school districts in Kansas, they were able to predict minority group educational attainment based on very few community-wide and school level characteristics, such as, demographic composition of the community and the student body.

Within this framework, school context will generally reflect and be influenced by community context. Thus, rich schools are expected to be in rich neighborhoods; white schools in white neighborhoods; and segregated schools within segregated communities. It seems that it would be nearly

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* Levinsohn and Wright, 1976.
** Paul D. Schumaker and Russell W. Getter, 1977, p. 7.

impossible to provide a school context conducive to minority educational achievement when a conducive community context is lacking. Inasmuch as students bring to schools the orientation attained from their home environments, we would expect, in a similar manner, that schools greatly mirror the communities of which they are a part.

Community context variables for an Hispanic subpopulation would indicate the type of minority subculture that exists in the larger community. This subculture then becomes an important socialization agent and must, therefore, be taken into consideration. From high income, high educational level populations we would expect greater achievement orientation, ala McClelland; whereas in low-income communities and in industrial/commerical settings the model would predict emphasis on skill acquisition and be more vocationally oriented. "The community context affects minority students directly through the structure of available and/or perceived opportunities in the application of formal educational skills."*

Shumaker and Getter argue that class, racial, and ethnic composition of the student body and the amount of resources are the most frequently examined contextual variables in the educational attainment literature among macro-level studies. The predominant finding is that class and racial composition of the students are the more important factors associated with minority group performance. These findings have normally been interpreted to mean that integrated schools provide a social context which enhances minority educational achievement.

Micro-level studies, on the other hand, stress the various psychological orientations of minority students. The studies also tend to examine the socialization forces which promote these value orientations. Results of such

* Schumaker and Getter, p. 12.

CHAPTER 5

SCHOOL DESEGREGATION REMEDIES FOR HISPANOS

> Although public acceptance of the principle of desegregation is at its highest point in our history . . . there is remarkable dissensus and confusion about the legitimacy and effectiveness of many of the methods being used or considered to combat segregation (from brief filed in Columbus case, "A Social Science Statement," 1979).

Desegregation Remedies

In 1954 Brown proclaimed segregated schools as inherently unequal and asked the school districts to take necessary steps to dissolve the dual system of education so prevalent at the time. In referring to student allocation, the court warned that the remedy for such segregation would be "administratively awkward, inconvenient and even bizarre in some situations." It clearly stated that inconvenience could not be avoided "when remedial adjustments are being made to eliminate the dual school systems." To expect that this is still not the case for dual school systems in 1979 is a dillusion of reality.

The anti-busing legislation of the subsequent decade slowly eroded our concept of "inconvenience." According to Orfield, "Each year from 1966-1977, the House passed at least one amendment to restrain school integration"* and in reference to the enforcement machinery of HEW in opposing the segregation of cities across the North and West, Hubert Humphrey (1970) is quoted as saying that enforcement had been "out of use for six years."**

Our statistical findings indicate that if present trends continue, schools will remain racially segregated for quite some time. Leading demographers, such as Reynolds Farley, conclude that "the nation's neighborhoods are almost as segregated now as they were thirty years ago."***

At present rates, is it any wonder that leading social scientists ask if the constitutional requirements proclaimed by the courts will ever be implemented? In the absence of major Federal direction in this area, how much can private civil rights groups accomplish on a case by case basis? For every window opened, a corridor door is closed. The expenditure is too high, and the cases are too many.

After over two decades of litigation, the courts have now taken a much more active role to eliminate dual school systems. At times they determine which plan among all is best suited to produce integration for all school children. What was once left to the school board is now decided in the courts.

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* Orfield, 1978, p. 239.
** Ibid., p. 273.
*** Farley, 1975, p. 167.

Desegregation plans have taken , rorms. But there is no substitute for obtaining strong community participation to formulate designs and implement plans. Community involvement works because the potential devisive tendencies have already been overcome. Cooperation in this respect minimizes ethnic conflict.

In school districts where community involvement is bypassed and where community force is sufficiently powerful, remedies either conform to community pressure or are in turn cleverly subverted. When DHEW audit reviews exposed blatant segregatory practices in the Southwest, little was done until rising Chicano militancy demonstrated its strength. Of the Texas cities found to be out of compliance after a DHEW review in 1969-70, eight were the scene of major school boycotts and it was these, with one exception, which became the centers of DHEW action. The situation is all too familiar in the literature and in our case studies. Total community mobilization is a much more powerful force than racial or national origin groups at times realize.

All too often remedies have been jeopardized by their own design. In an article on school desegregation, Alcala and Rangel (1972) discuss the various techniques by which Chicano segregation is perpetuated: (1) school construction--construction of identifiable Mexican school buildings and expanding these to accommodate increasing enrollment; (2) freedom-of-choice plans--these have not worked except in some school districts, but "after a strong community-wide effort by Chicano parents;" (p. 328); (3) transfer policies--which in many cases serve to facilitate Anglos to transfer out of the school district; or a variation of this, from one inter-district to

another, thus increasing Chicano concentration, as happened in Texas in the San Felipe and the Del Rio School district when in 1956 the TEA approved transfer of Anglos from one district to the other increasing segregation until the Supreme Court Case in 1971 consolidated both districts; (4) attendance zones—district rezoning illustrates the abuse (consult the 1970 DHEW review of Uvalde ISD); (5) busing—the desire to segregate can be so strong that busing is introduced for these purposes (e.g. Alice, ISD); (6) remedial classes or teaching—separate classrooms without regard to linguistic abilities are often introduced in response to the abolition of the "Mexican School" (e.g., Wharton, ISD). Desegregated schools with segregated classrooms cannot develop into integrated institutions. Instead, they heighten racial cleavage, and are seedbeds of conflict.*

Many educators believe that remedial and compensatory education will resolve the problems in segregated schools. Educational leaders subservient to the more socially powerful elements of their respective community will present arguments to justify isolation. In defense and frustration, many Chicanos and Puerto Ricans also argue that they also prefer segregation. Although some educational benefits may be brought about, this can only lead away from a unitary school system.

As Diego Castellanos (1978) points out, we can "accept, intellectually, the need to improve educational opportunity by breaking out of the ghetto and joining the mainstream. . . .we also are wary of the loss of power—political and economic—that would result from a diffusion of the. . .community" (p. 8). The burden of desegregation has too long fallen on the shoulders of the

* Henderson and Von Euler, 1977, p. 5.

victimized ethnic and racial minority and low-income groups. Remedies, including busing, must equitably affect all segments of a school district and not exercise the full weight of implementation on any one group.

The differences between voluntary and court ordered plans are important to examine. "Where desegregation is purely voluntary, widespread contacts between school authorities and many other community elements are essential right from the start."* This is most difficult to achieve in communities where, in fact, maximum racial conflict exists.

Furthermore, evidence exists that voluntary school desegregation plans are less likely to yield positive results than are mandatory plans. This was the conclusion of Rita Mahard and Robert Crain (1978) after reviewing 73 studies of school desegregation.

Other educators are rather strongly opposed to voluntary plans. Dr. Thomas Minter, past Superintendent of Wilmington, Delaware and Deputy Commissioner of Education in 1979, comments:

> It's not advisable to encourage the development of voluntary desegregation plans. Numerous districts around the country have found it necessary to resort to mandatory pupil assignments after voluntary plans failed to produce the court ordered proportions of minority and majority students in all schools in the designated desegregated area.*

* Smith, et al., 1973, p. 26.
** Minter, Thomas K., 1976, p.50.

It stands to reason that it is easier for a strong school board, political machinery, or school administrative staff to control a voluntary remedy compared to a court ordered mandate. Enforcement procedures are more likely to be relaxed.

Establishment of many of these voluntary remedies (e.g. voluntary transfer plans or magnet schools) are greater incentives for whites to participate in desegregation. For Hispanos there are seldom appropriate bilingual programs in the suburbs or fringes of town, while well developed ones exist in the inner city. Voluntary plans will not easily bring this about. It is therefore unlikely that Hispanic parents will ever become overly enthusiastic or much involved in these programs.

In referring to Hispanic attitudes toward desegregation vis-a-vis their rights, Orfield states that "something is strange about a legal victory whose benefits are opposed by many of its beneficiaries" (p. 205). Orfield should not be much surprised. As with voluntary plans, Hispanic parents are not overwhelmingly enthused about programs which seem remotely beneficial to their pressing linguistic needs. Furthermore, desegregation plans are not easily conveyed to most parents in a district, let alone to Hispanic parents through the Spanish media or any other means.

Bilingual Education and School Desegregation

The issue of whether bilingual education can be provided within a desegregated setting is under great debate and still undergoing considerable scrutiny. The term "bilingual/bicultural education" refers to school programs for linguistically different children that employ two languages as the medium of instruction with heightened cultural sensitivity and adequate curriculum. Although the program goals may differ, they usually focus on accepting the students' home language, respecting the students' culture and ethnicity, enhancing the students' self-concept and identity, and advancing the students' opportunity through schooling.

According to recent statistics from the National Center for Education Statistics (NCES), there are 3.1 million children, ages 5-18 yrs., with limited English proficiency. It is estimated that approximately one-half (1.5 million) of these are Hispanic students in need of bilingual education.

Some authors contend that research uncovers no evidence that bilingual programs work better for this type of youngster (Orfield, p. 323). Our review of past evaluations and research in progress indicates that bilingual programs are more effective than other approaches for non-English speaking ability and limited English speaking ability (NES/LESA) student populations. This fact, however, is hard to document because: (1) many evaluations of bilingual education have been poorly designed; (2) instruments for measuring program impact are not well developed; (3) there is a great diversity of programs such that it is difficult to document which programs work best under what circumstances; and (4) bilingual education is expected to do (or redo) in one or two years what America's educational system has not accomplished in many of its monolingual English schools,

* NCES, Survey of Income and Education, 1976.

without having to overcome language barriers. An instance of the latter is that fifth grade Spanish monolingual students, for example, are not only expected to learn English within an abbreviated period of time, but to learn it at the fifth grade equivalent.

Research does <u>not</u> indicate that bilingualism is detrimental to educational growth. At worst, it is about equal to regular teaching in subject matter areas, while additionally teaching a new language. For NES/LESA students, this is certainly a major step toward providing equal educational opportunity. Many of the myths which exist about bilingual education give vent to continued resistance.

Arguments about the acceleration of ethnic "particularism" through bilingualism and its concomitant effect on racial cleavage are not well substantiated. The term denotes racial separatism, as if minorities were historically responsible for and truly controlled this process. Diversity and pluralism are not new to American life. On the contrary, this country has been widely acclaimed as a "nation of immigrants." Teitelbaum and Hiller aptly summarize this issue:

> Some skeptics see bilingual education as a precursor of political and ethnic separatism that threatens to divide communities along rigid lines. Consequently, advocates of bilingual education must give assurances that bilingual programs will not separate minority from non-minority students.*

In effect, they caution that "fears of segregation" may, in fact, impede the implementation of bilingual programs.

No evidence exists that bilingual-bicultural education retards acquisition of the English language. Evidence does exist that it can

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* Herbert Teitelbaum and Richard J. Hiller, 1978, p. 159.

accelerate this process, as well as maintain a high degree of self-respect, pride, and sense of academic accomplishment which, in time, lessens likelihood of dropping out of school and aids in educational advancement. Bilingual education programs are not "remedial" programs. To the contrary, bilingual education must also exist for gifted and talented NES/LESA students, as well as for those in special education (e.g., SLD, EMR).

For Hispanos, equal educational opportunity seeks separation of ethnic groups for bilingual education instruction, while equal educational opportunities for black children promotes assignment to racially balanced schools to end racial isolation. While the two approaches require different settings and supporting environments, each must be able to operate within the framework of the other, not at its exclusion.

Undoubtedly, difficult questions will inevitably arise in the implementation of needed programs for each group. While bilingual programs operate more efficiently with exclusively NES/LESA students, desegregated schools require mixing blacks with whites, without regard to linguistic capability. Solving the dilemma of one group does not easily assist the other. Although these are conflicting juxtapositions, they are not irresoluble.

Due to the lack of needed Federal and State appropriations for bilingual education, desegregation remedies have not been very prudent in demanding that large percentages of English monolingual students be enrolled in bilingual education. This creates further difficulties for the classroom teacher and frustrates the development of adequate pedagogical techniques for totally distinct language groups. The constitutional mandate and the

Brown decision do not prescribe such solutions.* Although numerous writers have suggested that bilingualism can be achieved in an integrated setting,** this is not necessarily the most successful instructional approach.

Bilingualism need not isolate MES/LESA children from others. Yet to do so, as a bona fide ability group, is legally justified. Within this framework, many school activities and recreational programs can be shared. Also, racial mixes can exist after minimal language proficiency has been achieved. Both transitional and maintenance bilingual programs can easily adopt this practice.

Many school systems have adopted a written policy not to segregate students within the school for more than 25 percent of the school day, unless such groupings are bona fide ability groups (as adapted from the ESAA regulations). Some State statutes, such as California, require complete programs of bilingual instruction when there are fifteen or more LESA students in a single school who are of the same language group. If this number is not present, California requires an individual learning program, which must meet Federal requirements.

The nature of bilingual education program delivery demands that a minimal mass of students be available for a more efficient and cost effective per pupil expenditure. Evidence from our readings and site observations indicate that desegregation, when improperly enforced or poorly planned, does not support critical ratios of language minority groups for

* Neither DHEW guidelines nor Congressional statute specify particular types of instructional programs. This is leftr to State and local educational authorities.

** Orfield, 1978; Teitelbaum and Hiller, 1978; Roos, 1976; Josue Gonzalez, 1978.

However, because Hispanos have seldom entered as plaintiffs, they have consequently not received the benefits of litigation and the effects of school desegregation on Hispanos have sometimes been detrimental. Students in Boston, for instance, had been separated by color and classified as Spanish white and Spanish black until intervention by the Puerto Rican community. In other cites they have been diversely classified as "black," "other," "white," or Hispanic." Confusion runs rampant as it regards Hispanic ethnic identification.

> From 1954 to 1973 the Supreme Court, more lower courts, and HEW had desegregated only blacks, usually ignoring the segregation of Hispanos, even where closely present. . . .Decisions are generally based on the proposition that Mexican-Americans should simply be counted as whites.
>
> In Wilmington, Delaware, on the other hand, a federal court held the Latinos would not be defined as an unconstitutionally segregated minority group unless clear evidence proving de jure segregation by school officials was presented.*
>
> The legal status of Puerto Ricans is equally fuzzy, with contradictory decisions in different states.**

The Keyes (1975) decision did not settle the legal status of Hispanos. It states that "it is not clear what factors would determine how a particular Hispanic group in a given part of the country would be treated for desegregation purposes." In his argument against ethnic "particularism" Orfield plays on the regionalism and existing confusion of Hispanic identity in the U.S. as a basis to denegrate biculturalism (p. 226), although much of the confusion comes from the courts, not the Hispanic community.

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* Orfield, p. 202.

** Ibid., p. 204

From an educator's perspective, bilingual/bicultural education works best when sufficient numbers of NES/LESA students are grouped together. Some authors remark that "de facto segregation in bilingual schools until fluency in English is acquired is the only method that will permit an equal education."* While this interpretation may be correct, there are dangers in isolating non-native English speakers from mainstream children. Inasmuch as the evidence is overwhelming that the facilities and programs in segregated schools are inherently unequal, it is too risky to let these decisions rest on the whims of local educational officials. The past is too strewn with casualties to readily regain faith in local authorities. There are too few precedents to engender such confidence.

Carter and Segura strongly warn against the consequences of isolation under the guise of bilingual education.

> Bilingual education. . .may isolate them [Chicanos] even if classes are within ethnically mixed schools. . . Any class, program, or activity that separates out a racial or ethnic group should be carefully studied and evaluated.**

A major concern would be, what have the students learned or not learned from being set apart from peers? Does this outweigh the benefits of desegregated classes? We believe that it does not. In the racist scurry to maintain separateness, bilingual education can play the lead. The ruse is too familiar to the "Mexican room" of yesteryear.

The thought of assimilating with Hispanos is too threatening for some

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* Reeber, 1972, p. 112
** Carter and Segura, p. 168.

districts which, in turn, ironically opt for bilingual education. Referring to an El Paso, Texas plan, Blandina Cardenas de Ramirez says that the school district was "willing to do anything so long as they did not have to desegregate." Even Nixon espoused bilingual education, and praised it as an alternative to desegregation;* although, he also held back funds from Title VII and never sufficiently supported the program. The double message is clear.

With or without desegregation, the fact that bilingual educational services are needed is not always sufficient for the provision of these programs, LAU (1974) notwithstanding. Chicago, for instance, failed to provide special bilingual programs to some 6,200 NES/LESA children. Despite data showing that Latino students were in highly segregated schools, DHEW took no action to provide bilingual education or desegregate these children. Even after a Federal court ordered DHEW to enforce its own regulations it wasn't until one and a half years later (March 1977) that the city moved to desegregate faculties and initiate bilingual education. Yet even at that time, they had not initiated student desegregation.** Despite the passage of the Civil Rights Act in 1964," DHEW did not aid in Hispanic cases until 1969",*** and despite HEW findings of non-compliance in school districts in Texas and other states, little action was taken until 1970.

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* Orfield, p. 306.
** Orfield, 1978.
*** Alcala and Rangel, p. 347.

Legally, the courts cannot deny bilingual education on the grounds that this violates desegregation mandates.* They can, however, limit the parameters of bilingual programs, if perceived as segregatory in nature, and can relegate critical decision-making to local officials. At the same time, the courts can sidestep the bilingual issue altogether. The Hispanic community must take a greater lead in the court proceedings and in direct litigation to avoid detrimental compromises.

Within this rubric, there is a wide array of bilingual programs within a desegregated remedy and very few legal precedents from which to obtain national direction. Our concern is that the inclusion of too many non-minority students can easily jeopardize bilingual programs. Their presence may sufficiently impede the process as to render it unworkable and eventually dampen its effect. As Teitelbaum and Hiller predict, "the overriding mandate to desegregate will present formidable obstacles to organizing bilingual programs that are educationally viable and also meet the student assignment guidelines fixed by the courts."**

It is curious to note that in programs where Hispanic parents have fought long and hard for bilingual education, they are most suspicious of school desegregation fearing that dispersal of Hispanic students will adversely affect programs an dissipate whatever influence they have over those programs. It appears that existing bilingual programs are not being dismantled where community efforts have been strong in safeguarding the rights of Hispanic children. However, in cities like Milwaukee, it was still important that well-developed bilingual programs existed prior to school desegregation, since the latter can sometimes jeopardize local bilingual programs. According to Baez, Guskin and Fernandez, "the fact that Wisconsin

* Castellanos, 1978.
** Teitelbaum and Hiller, pp. 161-162.

had a state law requiring bilingual programming and providing for costs incurred by school districts was also of great importance in expanding existting bilingual programs."* The degree of parent participation, strength of existing bilingual programs, and presence of a state law safeguarding bilingual rights were all critically important in protecting Milwaukee's bilingual programs. This is also generally true of many other school districts across the country.

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* Baez, Guskin, and Fernandez, 1978, p. 83.

PART IV: AN EXPLANATION

CHAPTER 6: A THEORETICAL FRAMEWORK

> One hundred years have passed and the promise of equality remains, in large part, unfulfilled. It seems that we have succeeded in changing a system of slavery into a caste system based on race which may, in some respects, be more difficult to uproot than slavery itself. [Judge J. Skelly Wright, in Hobson (1967) at 515].

Segregation and Racism

In studying the educational system in America we find a microcosm of this society's structure and how it operates. Throughout this report we have been exploring how various branches of the Federal Government, as well as local governments, affect school policies. At the same time, we have examined how educational systems and influential community members can have effects on particular racial and national origin groups.

In looking at the Hispanic race, as a cultural rather than a biological racial group, the data provide sufficient evidence of a continued process of dual (or triad) systems of education with respect to racial grouping. Our historical analysis, critical review of the literature, and ethnographic and statistical reports indicate that racial stratification generates and sustains Hispanic school failure. Furthermore, Hispanic racial stratification, viewed historically, has been maintained systematically by dominant whites through legal and extralegal mechanisms since the entrance of Puerto Rico and the Mexican territories to the U.S. in the 19th century.

It has become obvious that Hispanos and blacks do not compete equally with whites. An individual's membership in a racially stratified group is an ascribed status. That is, he or she is not expected to behave according to acquired personal attributes such as education, occupation, or income, but according to the accepted view of the group of origin. Racial stratification limits individuals seeking improvement of status.* Social mobility through education, occupation, and income are not considered legitimate avenues for improving status for these individuals. This is not to suggest that Hispanos, for instance, would be totally excluded from high status jobs. The social systems are not totally rigid; they do allow some degree of boundary flexibility, as long as that boundary is easily controlled by the dominant white majority.

In reviewing black educational and economic trends during the first half of the century one finds that "As late as 1920, 85% of all Negro pupils in the South were enrolled in the first four grades. In 1916, there were only 57 negro public high schools with fewer than 20,000 students." During the next decade, in 1930, "the average white salary rose from slightly less than $200 to $900, while the average Negro salary rose from $100 to $400. And these figures reflect the peak of a national boom, both in national

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* John Ogbu, 1977.

income and in school population."*

The caste status of blacks and Hispanos is still reinforced by residential segregation and restrictions on occupational opportunities. Reynolds Farley, for instance, found that on the basis of data collected from the 1970 census, economic factors can no longer account for the disproportionate concentration of blacks in the central city. Unlike the past, blacks are now able to afford the housing, but racism, or blatant discrimination, has kept them out.

The educational myth, exploited by Jencks (1972), highlights the disparity. According to a 1975 study, "The educational composition of the neighborhood of the most highly educated black person is approximately comparable to that of a white high school drop-out."* The statistics are gloomy when one considers that "The average white family with an income below the official poverty line lives in a neighborhood with a higher average income than the neighborhood where the average black family with $25,000 a year lives.**

In exploring these disparities in Stockton, California,* Ogbu states that while the educational attainment between blacks and whites decreased from 1960 to 1970, the difference in the median income gap increased during that same period. Our ethnographic studies further indicate that residential segregation of blacks and Hispanos in Westville and Eastville cannot

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* Clift, 1952.
** Brigitte Mach Erbe, 1975, p. 804.
*** Orfield, p. 88.

be explained solely on the economic levels of these two groups.

With separate socioeconomic ladders for Hispanos and whites, the boundaries vary with circumstances but, for the most part, remain impermeable. Structurally, then, the relationships between the two groups approach the caste structure, from occupational and residential isolation to religious association. This reality has been mirrored in the schools, first through the maintenance of separate, "Mexican schools" and de facto minority schools and later through various forms of within-school segregation (e.g. the "Mexican room"). The history of desegregation is replete with human resistance working against effective implementation. Plans are designed then thwarted, and when implemented, subverted. Consequently, desegregation efforts and special programs necessary to meet the needs of Hispanic children attain varying degrees of success. The data from our case studies, Eastville and Westville differe significantly in this respect, with desegretion in the former meeting powerful and organized resistance, while proceeding more smoothly in the latter.

The differential strategies for social mobility influence motivation, peer pressure, and language, and are some of the key determinants to Hispanic success in school. In fact, racial stratification requires and promotes a lower level of performance in school to the extent that school failure becomes a kind of adaptation. In referring to a district similar to that of Westville, Professor Ogbu described the situationh succinctly for blacks:

> Black children learned quite early in life about the position of blacks in the total stratification system

> and the restrictions, beliefs, and attitudes that it generated, all of which combined to discourage them from maximizing their academic efforts.*

He goes on to say that since the 1960s the local school authorities have introduced a number of programs (compensatory education and bilingual education) to encourage better performance among blacks and Hispanos. However, these programs "have proved relatively ineffective in reducing school failure." Why? The programs were designed and implemented in a social situation where the structural forces prohibited minority children from adequate participation in the very programs designed to benefit their level of performance.

Students who enter a desegregated school with a lower level of skill are perceived as having little academic ability in almost every class they attend. Even if children were all of the same race but entered school with different skills and aptitudes for the conventional curriculum, a status order based on classroom achievement would emerge and would be as effective in triggering self-fulfilling prophecies as race. Predictable distinctions become more apparent with tracking or ability grouping and may be more severe for "non-white" or "colored" populations. The underachieving minority student is thus doubly stigmatized.

The interrelationship between minority education and the social position of that minority group both influences and is affected by the educational preparation of its children. This is a major factor in determining school outcomes, since formal education is a preparation of children for future social and economic participation in adult life. Consequently, we need to pay more attention to the nature of adult participation, institutional practices, and the social/community context in which education takes place.

*Ogbu, 1977, p. 21.

Theoretical Framework

In an attempt to explain (a) the resistance to school desegregation in communities with large Hispanic populations and (b) the wide range of variation in the extent and manifestation of that resistance, we propose a model based on racial conflict and cleavage.

Conflict and cleavage refer to internal contradictions. Ethnic Cleavage is defined in terms of boundary maintenance--degree of exclusiveness of membership in self-identified ethnic groups; that is, the extent to which groups include or exclude individuals whose traits are not those of the ones making the judgment. Conflict concerns the confrontation and contest between two or more self-identified groups for social and/or political resources, such as, the distribution of school funds. How are funds in schools allocated? Which programs are best geared toward the needs of each group? Which ethnic groups control which political offices? How are decisions made, on behalf of whom, and by whom?

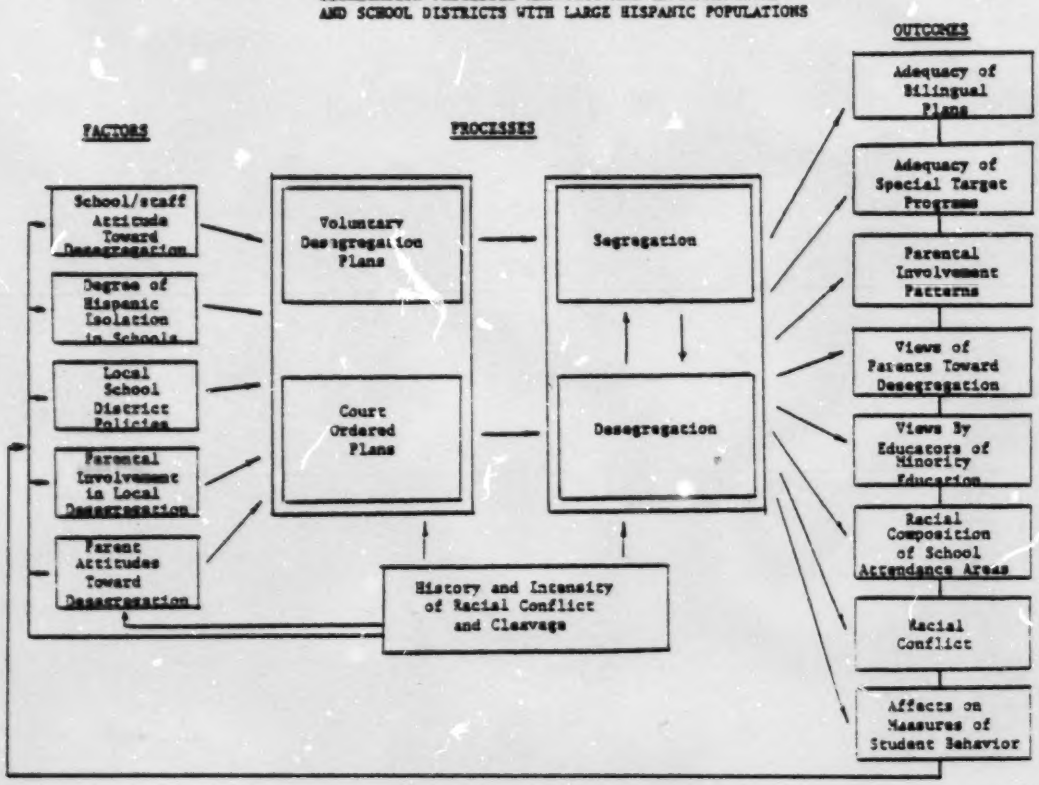
An analysis of these variables and their interrelationships, as well as the structural dynamic of a community, is essential in order to understand the dynamics of desegregation as it takes place in a particular social context. Ethnic relations and the structure in which they take place provide the key to unraveling the problem of why desegregation patterns vary, as well as answering the question: What are the effects of desegregation on Hispanos?

We suggest that the failure of desegregation programs is not simply the fault of poor legislation or inadequate judicial review, but rather of poor implementation and enforcement. The degree of desired success is built into

the remedies and reflects the extent to which powerful members of a community support desegregation of their schools and integration of the community. As long as the court remedies oppose the dominant powers, the longer the desegregation plans will be subverted.

The following flow chart was devised as an explanatory framework for the problems experienced in communities undergoing desegregation. Specifically, it is suggested that racial conflict and cleavage affect community context, educational structure, and the attitudes toward school in ways that determine patterns, plans, and outcomes of school desegregation. Racial conflict and cleavage are posited as the independent variable.

FIGURE 2 FACTORS AND VARIABLES AFFECTING DESEGREGATION AND SEGREGATION PROCESSES AND OUTCOMES IN COMMUNITIES AND SCHOOL DISTRICTS WITH LARGE HISPANIC POPULATIONS



This interface shapes and influences community context variables which, in turn, shape the educational situation and attitudes of individuals within and outside the educational system. It is because of these attitudes that court-ordered desegregation is eventually required in many instances. A desegregation court order reflects the inability of the community's racial or ethnic groups to cooperate and resolve their own differences. The design of the plan, a local responsibility by mandate of Brown, should reflect a local intent to desegregate. However, the more intensely argued the desegregation battle, the deeper the racial conflict, and the more likely the plan will be amended or changed in the courts. External intervention may help to increase racial cleavage, which may bring about a stronger plan. On the other hand, remedies planned for success can engender racial conflict and increase action of the dominant forces to impede the desegregation process.

Residential segregation, occupation structure, and the demographic structure of a community are a function of interrelationships. Racial cleavage is evident in restrictive residential covenants which structure occupational patterns, and in channels of access to economic and political power as well as social influence, all of which reflect position and consequent power.

The community, structured by ethnic interrelationships, in turn, has a powerful influence in the educational arena. The most obvious manifestation is the correlation between the segregated neighborhood and the neighborhood school, as radically distinct as the neighborhoods which may surround it.

If residential segregation alone does not suffice to guard the racial integrity of the school, attendance-zone gerrymandering establishes it. The superordinate group, which knows the political route and has access to political power, also gets elected to the school board and this group then becomes responsible for educational programs, fund allocation, and the like. This is a powerful position to hold, powerful enough to superimpose upon the school system the kind of ethnic segregation and caste-like structure found in the community.

Thus a predetermined set of attitudes is sustained within and outside the school system, from the teacher to the community. The systematic manipulation of subordinate groups into isolated neighborhoods and schools, while jockeying them out of economic and political power, takes its toll. Manifestations of the racial conflict will, of necessity, be heard throughout the community and school system. The degree to which ethnic conflict and cleavage exist in the community, that is, the extent to which there is

racial separation and strife, will affect all aspects of community life, from residential and occupational patterns to the running of the educational system.

By the same reasoning, it follows that the amount of conflict and cleavage becomes an important determiner of the extent and magnitude of a desegregation problem: in fact, a determining factor in the likelihood of a court battle, the length and bitterness of that battle, the tenacity of the parties to it, and the extent to which the community goes to avoid desegregation.

The differential impact of desegregation in a community is attributable to the radically different community settings in which the problem is analyzed. The ease with which the process proceeds reflects the degree of willingness all parties accept to implement school desegregation. Where communities voluntarily undergo desegregation, the racial conflict and cleavage are sufficiently limited and can be tackled and resolved within the community: members of different groups can strive to overcome conflicts without external prodding. Court ordered desegregation, on the other hand, occurs when groups cannot work together, cannot resolve their differences, and cannot come to terms with school desegregation of residential and social integration within the community.

Findings

We have seen in case after case that some school boards go to incredible lengths to circumvent and undermine the desegregation process. In Houston and Austin, for example, where Hispanos and blacks had been isolated residentially, occupationally, and in the schools, the court battles were long and hard. The caste system seemed to have been imprinted indelibly in the minds of the defending school board members. But even worse, the desegregation plans obviously devised to maintain and reify ethnic boundaries, were accepted by the district courts and affirmed by the Fifth Circuit Court of Appeals.

While some information on community context can be gleaned from the court cases and culled from the literature, neither source provides adequate information about the impact of desegregation on Hispanos and Hispanic communities. A more complete picture of the overall situation emerges from our OCR (1968-76) survey analyses and ethnographic field data. The OCR data yielded considerable information at the national, regional, and state levels about the range of school practices and their relationship to the level of segregation, as well as information on district and within-school isolation, and current segregation trends in school districts with large Hispanic population.

The field research has allowed us to trace the course of racial conflict and cleavage and the nature of group relationships in the community through time, in much greater depth than that allowed by other forms of research. The fieldworkers studied the dynamics of ethnic conflict and cleavage as it structured community context variables, affected the educational system, and erupted in the courts. Delving still deeper, our

research yielded rich information on the attitudes of the people involved in the desegregation process and clearly illustrated the way in which racial conflict and cleavage forged those attitudinal patterns.

What are the factors which mold the attitudes of students, teachers, staff, administrators? What are the attitudes of the parents in the barrios? In the inner-city slums? In the white suburbs? And, what effect is desegregation having on those long held attitudes? Only through intensive field research can we begin to understand some of the processes upon which the success of desegregation efforts hinge. Some of the marked differences between our two sites, Westville and Eastville, will be briefly sketched to highlight the correlation between community context variables, as they are shaped by racial conflict and cleavage and the types of battles over desegregation waged with their differential successes and failures.

If one looks rather cursorily at the Hispanic situation in Westville and Eastville, there are enough similarities to tempt generalization. The communities are roughly the same size, each with a similar size of Hispanic population and with proportionately equal black constituencies. In both cases, Hispanic unemployment rate is higher than that for whites and higher than that for the community overall; Hispanos are in low-status unskilled occupations; and the educational attainment of the Hispano is beow that for whites. It is also true that in each instance Hispanos tend to be centered in ethnically distinct neighborhoods. The differences are also striking. One community is on the West Coast, while the other is in the East. The former is primarily composed of Mexican American (Chicano) Hispanos; the latter has a high Puerto Rican percentage among its Hispanic population. At the same time, the Chicano population has remained

relatively unchanged after one century, while the majority of Puerto Ricans have arrived since 1960.

Overall, segregation has not greatly diminished for Hispanos in either community during the past eight years. In fact, OCR statistics indicate that since 1968 Hispanic segregation has increased in nearly half the school districts in the nation. Furthermore, in districts which have desegregated, Hispanic classroom isolation has replaced the de facto minority school. In addition, evidence indicates that bilingual education has been misused, by many districts, as a tool to combat the efforts of a desegregated system.

Inconsistency abounds in other school districts over the classification of Hispano as either "white," "black," or "other," as majority or minority. Confusion rests in those tri-ethnic districts where blacks and Hispanos can racially balance a school. Although we were informed the practice was not widespread, we found this to be the case in several school districts.*

The process of desegregation continues to occur with little parental inclusion. Our case studies indicate that even when parental groups met with district administrators, parental participation was a sham. Overall, parents were given a minimal amount of information about desegregation. Even inservice efforts with parents have not met with major success. Among Hispanos, nearly half the parents are unaware of what's going on and many of those who are have grave misconceptions about desegregation.

Teachers, like parents, are also uninformed about local school district plans. Their attitude is either one of maximum disinterest or strong hostility when desegregation has affected their job. Surprisingly, teacher hostility seemed to increase the second year of desegregation in one of our ethnographic sites. (See Volume II.)

* See discussion of ethnographic reports, Volume II.

Federal court ordered plans were, on the whole, more comprehensive than locally devised plans and state plans. Ironically, many plans which defer to parent initiative (e.g., voluntary transfer plans) affect minority groups the least. Among Hispanos, limited English speaking ability students benefited least, although they attended the most segregated schools.

Our findings indicate that where the dominant community forces are against desegregation, there is a continual affinity for bilingual education. In fact, the power strategy has neutralized Hispanic support for desegregation by offering bilingual education as a viable option. This was especially effective in Eastville where it clearly offset Hispanic demands for desegregation. Hispanos appeared uninterested when bilingual education was not offered in predominantly white schools. Hispanos lost interest in these schools and withdrew from the desegregation battle. This ploy continues to keep Hispanic segregation a reality. In fact, Eastville perpetuated the myth that desegregation, if enacted, would surely result in the loss of bilingual funds.

Our study has found that loss of funds for bilingual education is not a necessary outcome; nor was it true in Eastville. The impact of desegregation on bilingual education is varied, even within a desegregated district. In Westville, for instance, the pairing of schools increased the number of limited English speaking students for K-3 and 4-6 grade schools, but limited this group in K-6 schools, due to a loss of LESA concentration for each grade level. The effects are also mixed for magnet schools, exemplary schools, triad schools, and other types of desegregated schools. Since remedies have seldom included the interests of Hispanic students within the context of desegregation, in these instances, the results will at times in-

crease, while at other times severely decrease the critical number of students needed to implement even a limited program. Student allocation plans can therefore seriously jeopardize bilingual programs if the allocation process does not enforce the minimal requisite for the conduct of bilingual instruction in compliance with the LAU provisions.

In the context of bilingual education the ethnic/racial hostility toward desegregation is also demonstrated against bilingual education. However, it is not as overt in bilingual education since white society seems most supportive of bilingual efforts when bilingual education is translated into "separate" education for Hispanos.

It was interesting to notice that bilingual education is more strongly supported by Hispanic communities recently arrived in the States. That is, those communities with large LESA population groups are more inclined toward bilingual education for their children. A community with a language difficulty will more actively seek to relieve the language barrier. Bilingual education also assist the LESA community by offering it an important vehicle toward entry into the occupational structure of the society. On the other hand, more established Hispanic communities are more likely to perceive bilingual education as a hindrance, as an indelible reminder of their heritage which must be shed to more easily melt into the American pot.

In this respect, the older Hispanic community is also cast into a more fixed position within its society. The separation among groups is well understood and rigidly enforced. Racial cleavage, as in Westville, can be well protected by residential covenants and laws forbidding intermarriage (until recently). Such a segregated structure is strongly resistant

to change and boundary maintenance is not easily surrendered without violence.

A recently arrived population, such as that of Eastville, can be easily kindled by violence because its boundaries have not been rigidly cast. Since it has not obtained a stable relationship with the dominant group, it neither knows the ropes nor the political structure. Resolution of conflict will assist its struggle for recognition and position within the larger society.

Overt conflict was more strongly demonstrated in the high school. Having larger enrollments, these schools also contained a greater student mixture than neighborhood schools. Our onsite studies indicated that open conflict was minimized through carefully implemented desegregation procedures. However, poorly devised, weak plans also tended to dissipate conflict. Some of the most rigid plans have engendered major conflict. However, student hostility and white flight reduced considerably after the first year of school desegegation.

On the legal battlefield, the strongly entrenched community can more easily prove de jure segregation, while its counterpart remains de facto. It will also create a formidable legal challenge and possibly a more complex legal battle than is otherwise the case.

Regarding black and white desegregation, we suspect our generalizations will still hold true. In a tri-ethnic community, however, "black" participation in the desegregation process may overshadow "brown" participation. In such cases our generalizations may not always be true. Hispanic participation may be minimal and its effect on the larger white community may be limited.

As a whole, desegregation has increased equalization of resources in many impoverished schools throughout the country for both blacks and Hispanos.

Conclusions

Many myths abound regarding school desegregation, some of which concern desegregation, in general, and some of which is specific to Hispanos. Our case studies hightlighted the fact that good desegregation plans, in fact, the best plans, increased community conflict. And the more polarized the community, the greater the intensity of the conflict. At the same time, it is true that these plans more quickly enhanced racial relations. Social change of the type brought about through desegregation affects all aspects of community life. Prominent court orders are more likely to disrupt this state than mediocre, and oftentimes, compromised voluntary remedies. The findings seem to suggest, although this was not demonstrated conclusively, that mediocre plans which minimize conflict in the short run tend to continue in social turmoil for a long time until, in the long run, overt conflict prevails.

The extent of conflict is more related to community history of racial cleavage and comprehensiveness and rigidness of school desegregation plans than all other factors combined.

School desegregation can be accomplished in the most racially strife cities in the country. It requires an inordinate amount of planning and

preparedness before implementation. Large community involvement must be present at all stages of the process, from the inception of the design to full implementation and later collaboration with the school system. The amount of money required to undertake education change is certainly dependdent on the comprehensiveness of the plan, but in no way is it as financially unfeasible as is widely presumed. Even busing, widely claimed to be the most expensive undertaking, accounts for a small percentage of a school district's total budget. Procrastination and legal delays in school desegregation only serve to increase general anxiety over impending desegregation; and in some instances allows time for community cleavage and mobilization to take firm root. White flight is but one phenomenon; and one of the more easily documented.

The courts have not upheld consistent rulings. Confusion and vacillation seems to increase the amount of litigation and further confounds the issues. Absence of legal enforcement obviates the work of the courts. Executive intervention and Congressional overruling creates an unwieldy and effete record of progress. An examination of this interplay reveals more the confusion and inept procedures within Federal and local governments than malicious intent, although a fair amount of the latter is also present.

Americans largely support desegregation. But their support stops short of personal action. The connection between the mores and behavior is still a rather weak link. This is more the case when organized resistance and misinformation is rampant. Behavioral change against deep seated convictions must be legislated into action, not circumvented.

Major advances in school desegregation have occurred the last fifteen years, but much of this action has laid dormant the past decade. As litigation

has increased, so has the lack of advancement in school desegregation across the nation. Present rates do not indicate a very fast changing future. As it concerns Hispanos, desegregation has virtually remained still since 1968, when the first national statistics were available.

Problems of school desegregation are not based on busing, high cost factors, poor white school achievement, de fact v. de jure segregation, majority resistance to desegregation, or even white flight. As we have seen, many of these are spurious to the arguments over school desegregation. What is more significant is the effectiveness of court ordered plans versus voluntary ones, history of community separateness and ethnical/racial conflict, extent of community participation and influence in the process of school desegregation, types of remedies proposed, and impact on different ethnic/racial groups.

Though much social changes comes about through conflict, it usually occurs after the acquisition or semblance of power. Newly gained minority power frequently translates into instrutional change, including educational change, both in the structure of the institution and the position minority groups occupy within.

Local pressure is further enhanced through non-locally controlled institutions and the Federal government. Furthermore, outside sources of funds assist in the creation of external support systems to combat local power blocs. Although minority groups are seldom allowed to acquire such power, the degree to which they can collectively exercise influence on dominant structures, albeit limited (e.g. Eastville and Westville), is indicative of change in the welfare of their children's education. Major court-ordered plans have been preceded by an active support of local self-help groups and strong community involvement.

APPENDIX A

In U.S. v. Lubbock Independent School District [316 F. Supp. 1310 (N.D. Texas 1970)] Mexican American public school students were denied relief because the court found the alleged segregation to be de facto.

School board minutes were used as evidence in Perez v. Sonora Ind. School District [Civil No. 6--224 (N.D. Texas, Nov. 5, 1970)] to show that segregation of Mexican Americans in the schools had been engineered by gerrymandering attendance zones.* Nevertheless, the court held that the schools were "unitary, non-discriminatory, fully desegregated."

The lower courts in Tasby v. Estes, Morales v. Uvalde Independent School District, and Zamora v. New Braunfels, all in Texas, ruled that segregation in the public schools was an artifact of voluntary residential patterns and therefore de facto rather than de jure. For example, in Morales v. Uvalde (W.D. Texas June 1, 1971) the court remarked that it could not allow "any and all groups of private individuals to institute suits to revamp and revise an entire school system which has been elected under the democratic process by the people." The decisions in all three cases would later be reversed by the fifth circuit court.

Cases involving desegregation in Corpus Christi, Austin, Midland, Dallas, and Houston highlight the battle over de jure and de facto segregation, and mirror the attitudes of school districts and the courts toward Mexican Americans.

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* This also occurred in Oxnard, CA. The school board minutes revealed prejudice against Chicanos.

Cisneros v. Corpus Christi Independent School District [324 F. Supp, 599 (S.D. Tex, 1970), 330 F. Supp. 1377 (S.D. Tex, 1971), 467 F. 2d 142 (5th Cir., en banc. 1972), cert denied 93 S. Ct. 3052 (1973) 413 US 922 (1973), rehearing denied 414 US 881 (1975)] was one of the most important cases involving Hispanos because it was the first case in which Brown was specifically extended to cover Mexican Americans. In determining the applicability of Brown to Mexican Americans in Corpus Christi, the court pointed out:

> Some may argue that the 14th Amendment's historic concern for the Negro (sic) {cf. The Slaughter House Cases, 83 U.S. (16 Wall) 36, 71-72, 21 L. Ed. 394 (1873)} and the Negro's (sic) long history of political and economic disadvantage provide a rational basis for affording the Negro (sic) with a broader right under the 14th Amendment in the area of educational opportunity. This court rejects such reasoning as being patently unsound {324 F. Supp (S.D. Texas 1970 at 606, fn 28)}.

The court then ruled that placing Negroes (sic) and Mexican Americans in the same school but apart from whites did not achieve a unitary system as contemplated by law. Furthermore, the court ruled that specific acts and policies of school officials, rather than segregation required by statute, constitute de jure segregation. Hereto- fore, de jure segregation had been understood to mean State law and statutes, and school officials argued that theirs was not a dual system because there were no such statutes. The distinction betweeen de jure and de facto segregation was effectively blurred by this ruling and the Cisneros case served as a precedent for other important litigation involving Hispanos in the Southwest.

On August 7, 1970, the United States Department of Justice, taking authority from the Civil Rights Act of 1964, filed suit in district court against the Austin independent School District, charging the the school district was "discriminating against Mexican American students by assigning them to schools that are identifiable as Mexican American schools and at-

tended almost exclusively by Mexican American and Negro students" (at 853). The U. S. Government asked the district court to require the defendants to take affirmative action to disestablish that dual system of schools based on race and national origin and to correct the effects of past discrimination based on race and national origin.

After receiving the school district's plans, the district court issued a Memorandum Opinion and Order in which it "recognized that 'Mexican Americans constitute a separate ethnic group' but held that the Government 'failed in maintaining its burden of proof' that there had been de jure discrimination against Mexican Americans" (from 854). Furthermore, the district court claimed that the U. S. Government had not shown intentional perpetuation of segregation against blacks since 1955, but allowed only that "vestiges of a dual system continue to exist with respect to Blacks" (at 854).

The "plan" accepted by the district court included "retention of the basic neighborhood school concept substantially modified" and an "emphasis on the cultural variety of our three ethnic groups in such a way that wholesome attitudes are developed and all the students come to respect and appreciate the contributions of each ethnic group" (at 858). Teams of principals, teachers, and parents of multiethnic origin were to "assess and review" planned educational programs among companion schools.

The fifth circuit court remarked appropriately: "The plan will no doubt improve cultural relations and communication among the three ethnic groups—but it is not a desegregation plan in any sense" (at 859). The circuit court noted the district court's findings that "Texas has never required by (statute) that Mexican American children be segregated, and the

AISD has never enacted regulations to that effect" (at 866), but also noted that the Austin district had drawn "zone lines which corresponded with ethnically and racially segregated neighborhoods." The fifth circuit court recognized that after Brown the Austin school district nominally undertook to abolish the dual system based on separate schools for blacks and whites but stated it "continued to perpetuate segregation of Mexican Americans" (at 867). Of the plan accepted by the district court, the circuit court reasoned: "The act of dismantling a dual system based on race and providing equal educational opportunity for black students is in itself state action. When this state action has the effect of denying equal educational opportunity to Mexican Americans, the Equal Protection Clause has been violated" (at 869).

In U.S. v. Texas Educational Agency [Austin I. 467 F. 2d 848 (5th Cir. 1972)] the fifth circuit court ruled that the Austin Independent School District's "dual school system" must be eliminated and replaced by a nondiscriminatory school system. It further stated: "Mexican Americans are as much entitled to benefits of equal protection clause as blacks or whites" (at 849).

Both Cisneros and Austin laid the groundwork for the turnaround in the long-litigated Houston case and set the standard for the court's ruling on de jure/de facto litigation. In both cases segregation was defined absent segregation by statute, diverging, then, from the statutory segregation defined in Brown.

In U.S. v. Jefferson County Board of Education [372 F. 2d 836 (5th Cir. 1966)], a precursor to Ross v. Eckles,* seven defendant school boards were "permanently enjoined from discrimination on the basis of race or color in the operation of the school system" and required to "take affirmative action to disestablish all school segregation and to eliminate

* Ross v. Eckles §317 F. Supp. 512 (S.D. Tex); aff'd 434 F. 2d 1140, (5th Cir. 1970)].

the effects of past racial discrimination in the operation of the school system" (at 896).

Houston has logistical problems since it is the largest school district in the South and sixth in the nation with 238,460 students of which 66.9% white and 33.1% black (note that none are Mexican American).

Later, in a motion to intervene in Ross v. Eckles, (Civil No. 10444 (S.D. Tex., May 24, 1975)) Judge Connally succinctly summarized the underlying premise of the subterfuge: "The Houston Independent School District (as I believe has been true generally for school purposed throughout this state) has always treated Latin Americans as of the Anglo or White race." He hedges on that as he continued, however, seemingly edgy about the permanence of the racial classificiation, and concludes that "even if Chicanos were an identifiable minority group they were not entitled 'to escape the effects of integration (with blacks)' because they had not been subjected to 'state-imposed segregation.'" (quoted in Alcala and Rangel fn 254, p. 349).

In U.S. v. Midland Independent School District [519 F. 2d 60 (1975)], the school district was charged with maintaining separate schools for Blacks and Mexican Americans. While such was shown to be the case for Blacks, the court held that segregation of Mexican Americans was de facto and they were not taken into account in the desegregation plan. The court's attitude toward intervention was plainly stated:

> We are concerned in these cases with the elimination of the discrimination inherent in the dual school systems, not with myriad factors of human existence which can cause discrimination in a multitude of ways on racial, religious, or ethnic grounds. The target of the cases from Brown I to the present was the dual school system. The elimination of racial discrimination in public schools is a large task and one that should not be retarded by efforts to achieve broader purposes lying beyond the jurisdiction of school authorities. One vehicle can carry only a limited amount of baggage. It would not serve the important objective of Brown I to seek to use school desegregation cases for purposes beyond their scope.

The court ruled that the school system was operating in a unitary fashion and denied relief to Mexican Americans. The appeals court vacated the judgment and remanded it back to the district, which once again held "that the school district had never segregated Mexican American students and denied relief at the one virtually all Mexican American school in question. The decision was appealed again and the fifth circuit court held that "an overriding intent by the school board to segregate Mexican Americans and blacks was demonstrated." In its decision the fifth circuit briefly reviewed two other cases in which lower court decisions of de facto segregation against Mexican Americans had been reversed. Morales v. Shannon [516 F. 2d 411 (5th Cir. 1975)] was similar to Midland, both in historically maintaining Mexican schools, and in finding systematic and intentional segregation of Mexican Americans perpetuated by school policy. De jure discrimination against Mexican Americans was also recognized in the Dallas Independent School District case, Tasby (1975).

In Alvarado v. El Paso Independent School District [445 F. 2d 1011 (5th Cir. 1972), rev'd 326 F. Supp. 674 (W.D. Texas 1971)], the court found Chicanos to be a "proper class" and reversed a decision by the lower court that dismissed the Chicano suit alleging racial and ethnic discrimination. Later in Arvizu (1974) the court noted that:

> All too often the practical effects of the desegregation of a tri-ethnic school system has been that Black students are mixed with Mexican American students, thus denying both groups the benefit of any meaningful desegregation.

In U.S. v. State of Texas [342 F. Supp. 24 (1971) (San Felipe del Rio Consolidated - Independent School District)] Mexican American students in the

State of Texas were found to be:

> A recognizable ethnic group and, hence, may avail themselves of the protections afforded under the 14th Amendment and under Title VI . . . and Mexican American students in the Del Rio area have been subjected over the years, to unequal treatment with respect to the educational opportunities afforded them and are, thus, part of a so-called de jure school system based upon separation of students of different ethnic origins (at 24).

Thh decision goes on to say that if the State didn't "directly create" the desegregation "arrangement" it condoned it through financial support. However, based on facts and findings the court believed "that the segregated system", described above, "existed as the result of state action."

In People v. San Diego Unified School District [96 Cal Rptr 658 (Cal. App. 1971)], it was found that the State action had perpetuated existing imbalances, and in Serrano v. Priest [96 Cal. Rptr., 601 (1971)] the State's public school financing practices, based on local property taxes, were found to be in violation of the equal protection clause of the California constitution* since quality of school was predicated on wealth of the neighborhood. "This funding scheme invidiously discriminates against the poor because it makes the quality of education of a child the fundation of the wealth of his parents and neighbors."**

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* A similar conclusion was reached in the New Jersey State Supreme Court in the Robinson (1976) decision.

** Ironically, a very similar case reached the Supreme Court two years later. In Rodriguez v. San Antonio Independent School District [299 F. Supp. 476 (W.D. Texas 1969), 411 U.S. 1 (1973)], residents of an Mexican American school district alleged that the Texas system of financing its public schools was unfair in that monies collected in each district were for exclusive use in that district. Poor districts have poor schools, and constitutional rights of poor children were being violated. This was argued before the Supreme Court which then ruled that education was not a fundamental right guaranteed by the Constitution. So while the school district itself may be discriminated against by the State's financing practice, the school children themselves were not.